

MINUTES
NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION
REVIEW COMMITTEE
FOURTEENTH MEETING: JANUARY 29-31, 1998
WASHINGTON, DC

The fourteenth meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Ms. Tessie Naranjo at 8:30 a.m., Thursday, January 29, 1998, at the Ambassador Room, Embassy Row Hilton Hotel, Washington, DC. The following Review Committee members, National Park Service (NPS) staff, and others were in attendance:

Members of the Review Committee:

- Ms. Tessie Naranjo, Chair
- Mr. James Bradley
- Mr. Lawrence Hart
- Mr. Armand Minthorn
- Mr. John O'Shea
- Mr. Martin E. Sullivan

National Park Service staff present:

- Mr. Francis P. McManamon, Departmental Consulting Archaeologist, Washington, DC
- Mr. C. Timothy McKeown, NAGPRA Program Leader, Washington, DC
- Mr. Hugh (Sam) Ball, Archaeologist, Washington, DC
- Ms. Jean Kelley, NAGPRA Consultant, Washington, DC
- Ms. Mandy Murphy, NAGPRA Consultant, Washington, DC
- Ms. Jennifer Schansberg, NAGPRA Consultant, Washington, DC
- Ms. Emily Robinson, Intern, Washington, DC

The following were in attendance during some or all of the proceedings:

- Mr. John-Bruce Alexander, Washington College, Chestertown, Maryland
- Mr. Roger Anyon, Pueblo Zuni, Smithsonian Repatriation Review Committee, Tucson, Arizona
- Ms. Laura Perez Arce, National Museum of the American Indian, Bronx, New York
- Ms. Annette Arkeketa, Otoe-Missouria/Creek, American Indian Resource & Education Coalition, Corpus Christi, TX
- Mr. Gary P. Aronsen, Department of Anthropology, Yale University, New Haven, Connecticut
- Ms. Joan Bacharach, National Park Service, Washington, DC
- Ms. Barbara Ball, Reston, Virginia
- Mr. Beauandre Ball, Reston, Virginia
- Ms. Samantha Ball, Reston, Virginia
- Ms. Lenore Barbian, National Museum of Health & Medicine, Washington, DC
- Mr. Richard M. Begay, Navajo Nation, Window Rock, Arizona
- Ms. Marcine Ben, Tohono O'odham Nation, Sells, Arizona
- Ms. Judith Berman, University of Pennsylvania Museum, Philadelphia, Pennsylvania
- Mr. Bruce Bernstein, National Museum of the American Indian, Washington, DC
- Mr. Bill Billeck, National Museum of Natural History, Washington, DC
- Mr. Bobby C. Billie, Independent Traditional Seminole Nation of Florida, Daytona Beach, Florida

Ms. Cindy Bloom, Midwest SOARRING, Prairie Grove, Illinois
 Mr. Richard M. Bogg, Navajo Nation, Window Rock, Arizona
 Mr. Bruce J. Bourque, Maine State Museum, Maine
 Mr. Gail Brown, University of Maryland, Lanham, Maryland
 Ms. Justine Buck, Brooklyn Museum of Art, Brooklyn, New York
 Ms. Amanda Burt, Tracy's Landing, Maryland
 Mr. Tom Butts, University of Michigan, Washington, DC
 Ms. Chris Caperton, Energetics, Inc., Washington, DC
 Ms. Patricia Capone, Peabody Museum, Harvard University, Cambridge, Massachusetts
 Ms. Connie Cascales, White County Historical Museum, Monticello, Indiana
 Ms. Diane Cashin, University of California, Washington, DC
 Ms. Miriam Chapman, US Department of Interior, Washington, DC
 Mr. Ron Chiago, Salt River Pima-Maricopa Indian Community, Scottsdale, Arizona
 Ms. Abby Clouse, Office of Repatriation, Smithsonian Institution, Washington, DC
 Mr. Oliver J. Collins, Native American Alliance of Ohio, McDermott, Ohio
 Ms. Cherie Corey, Concord, Massachusetts
 Ms. Barbara Crandell, Native American Alliance of Ohio, Thornville, Ohio
 Mr. Bruce Crespin, US Bureau of Land Management-Native American Office, Santa Fe, New Mexico
 Ms. Stephanie Damadio, US Bureau of Land Management, Washington, DC
 Mr. Joe Day, Minnesota Indian Affairs Council, Bemidji, Minnesota
 Mr. William Day, Tunica-Biloxi Indians of Louisiana, Marksville, Louisiana
 Mr. Evan DeBloois, US Forest Service, Washington, DC
 Mr. Alan Downer, Navajo Nation, Window Rock, Arizona
 Mr. Mark Dudzik, Office of State Archaeologist, State of Minnesota, St. Paul, Minnesota
 Mr. Maurice Eben, Pyramid Lake Paiute, Sutcliffe, Nevada
 Mr. Bruce Eberle, FHWA, US Department of Transportation, Washington, DC
 Ms. Clare Farrell, Midwest SOARRING, Oak Park, Illinois
 Ms. Natalie Firnhabe, Smithsonian Institution, Washington, DC
 Ms. Gillian Flyn, National Museum of Natural History, Washington, DC
 Ms. Wendy Fontenelle, Aishwi Aiwan Museum, Zuni, New Mexico
 Mr. Lee Foster, US Army Environmental Center, APG, Maryland
 Ms. Myra Giesen, US Bureau of Reclamation, Lawrence, Kansas
 Ms. Martha Graham, American Museum of Natural History, New York, New York
 Mr. David Guldenzopf, US Army, Baltimore, Maryland
 Ms. Elaine Guthrie, American Museum of Natural History, New York, New York
 Ms. Erica Guyer, US Department of Interior, Washington, DC
 Ms. Lesa K. Hagel, Lesa K. Hagel Word Processing, Rapid City, South Dakota
 Ms. Ange A. Hamilton, University of South Dakota Law School, Vermillion, South Dakota
 Ms. Gabrielle M. Hamilton, National Museum of the American Indian-Research Branch, Bronx, NY
 Mr. Jason Harding, National Museum of American Indian, Bronx, New York
 Ms. Roberta Hayworth, US Army Corps of Engineers, St. Louis, Missouri
 Ms. Ann Hooker, US Federal Aviation Administration, Washington, DC
 Mr. Todd Howell, American Museum of Natural History, New York, New York
 Mr. Phil Huber, US Army, Alexandria, Virginia
 Ms. Andrea Hunter, Smithsonian Repatriation Review Committee, Northern Arizona University, Flagstaff, AZ

Ms. Patricia Hunt-Jones, Smithsonian, Kensington, Colorado
 Ms. Barbara Isaac, Peabody Museum, Harvard University, Cambridge, Massachusetts
 Ms. Gwyneira Isaac, Oxford University, Cambridge, Massachusetts
 Mr. Richard Jacob, Yale University, New Haven, Connecticut
 Mr. Joseph T. Joaquin, Tohono O'odham Nation, Sells, Arizona
 Ms. Jessica Johnson, National Park Service, Washington, DC
 Mr. John F.C. Johnson, Chugach Alaska Corporation, Anchorage, Alaska
 Ms. Tamara Johnston, Bryn Mawr College, Narberth, Pennsylvania
 Ms. Pamela Jurdine, University of Pennsylvania Museum of Archaeology and Anthropology,
 Philadelphia, PA
 Mr. Jefferson Keel, Chickasaw Nation, Ada, Oklahoma
 Mr. Kevin Kilcullen, US Fish & Wildlife Service, Arlington, Virginia
 Ms. Roberta Kirk, National Museum of the American Indian, Bronx, New York
 Ms. Stephanie Klodzen, US Department of Commerce, Washington, DC
 Ms. Melinda Knapp, Ohio Historical Society, Columbus, Ohio
 Mr. KC Kraft, Citizen Potawatomi Nation, Norman, Oklahoma
 Ms. Lisa Kraft, Citizen Potawatomi Nation, Norman, Oklahoma
 Ms. D. Bambi Kraus, Keepers of the Treasures, Washington, DC
 Mr. Leigh J. Kuwanwisiwma, Hopi, Kykotsmovi, Arizona
 Ms. Laureen LaBar-Kidd, Maine State Museum, Augusta, Maine
 Mr. Robert W. Lannan, US Army Corps of Engineers, Washington, DC
 Ms. Shannon Larsen, EEC, Daytona Beach, Florida
 Mr. Russell Leighty, American Museum of Natural History, New York, NY
 Ms. Joan Lester, Boston Children's Museum, Boston, Massachusetts
 Mr. Ronald S. Little Owl, Three Affiliated Tribes, Smithsonian Repatriation Review Committee,
 Halliday, ND
 Ms. Gloria Lomahaftewa, Hopi, Heard Museum, Phoenix, Arizona
 Mr. Ed Lone Fight, Three Affiliated Tribes, New Town, North Dakota
 Ms. Rhonda Lueck, US Army Corps of Engineers, St. Louis, Missouri
 Mr. Jason W. Lyon, Nez Perce Tribe, Lapwai, Idaho
 Ms. Melanie Marcotte, Chitimacha Tribe of Louisiana, United South and Eastern Tribes, Charenton, LA
 Mr. Mark Marin, Field Museum of Natural History, Washington, DC
 Ms. Carla Mattix, US Department of Interior-Solicitor's Office, Washington, DC
 Mr. Doug McCoard, Native American Alliance of Ohio, Lucasville, Ohio
 Ms. Jean McCoard, Native American Alliance of Ohio, Lucasville, Ohio
 Ms. Kathleen McLaughlin, Navy, Alexandria, Virginia
 Mr. Johnny Means, Oklahoma City, Oklahoma
 Ms. Paula Molloy, National Museum of Natural History, Washington, DC
 Mr. Robert Morgan, Maine State Museum, Bangor, Maine
 Ms. Karen Mudar, Office of Repatriation, Smithsonian Institution, Washington, DC
 Ms. Nell Murphy, American Museum of Natural History, New York, New York
 Ms. Marilyn Nickels, Bureau of Land Management, Washington, DC
 Mr. Don Nicholson, US Department of Justice, Washington, DC
 Ms. Nan Nixon, Harvard University, Cambridge, Massachusetts
 Mr. Kevin Olbrysh, National Museum of Natural History, Washington, DC
 Ms. Cynthia Orlando, Ft. Clatsop National Monument, National Park Service, Astoria, Oregon

Ms. Julie Pawelczyk, American Museum of Natural History, Washington, DC
 Ms. Ramona Peters, Wampanoag Confederation, Mashpee, Massachusetts
 Ms. Martha Potter-Otto, Ohio Historical Society, Columbus, Ohio
 Mr. Ferdinand Protzman, ARTNEWS, Kensington, Maryland
 Ms. Teresa Raczek, American Museum of Natural History, New York, New York
 Ms. Constance Ramirez, General Services Administration, Washington, DC
 Ms. Lynne Richardson, US Federal Bureau of Investigation, Washington, DC
 Ms. Leah Rosenmeier, RS Peabody, Andover, Massachusetts
 Mr. Dallas Ross, Upper Sioux Community & Minnesota Indian Affairs Council, Granite Falls,
 Minnesota
 Mr. Paul Rubenstein, US Army Corps of Engineers, Washington, DC
 Mr. Allan A. Ryan, Jr., Harvard University, Cambridge, Massachusetts
 Ms. Katherine Sanford, Department of Anthropology, The George Washington University, Washington,
 DC
 Ms. Kathleen Schamel, National Resources Conservation Service, Washington, DC
 Mr. Joseph Schomaker, Fluor Daniel Fernald Department of Energy, Cincinnati, Ohio
 Ms. Susan Secakuku, National Museum of Natural History, Smithsonian, Washington, DC
 Mr. G. Singer, American Museum of Natural History, New York, New York
 Mr. John Sipes, Cheyenne, Norman, Oklahoma
 Mr. David Smith, Winnebago Tribe of Nebraska, Winnebago, Nebraska
 Ms. Laura Smith, University of Pennsylvania Museum, Philadelphia, Pennsylvania
 Mr. Chuck Smythe, National Museum of Natural History, Washington, DC
 Mr. Stuart Speaker, National Museum of Natural History, Washington, DC
 Mr. Robert Stanton, National Park Service, Washington, DC
 Ms. Julie Steele, National Park Service, Valley Forge, Pennsylvania
 Mr. Vin Steponaitis, Society for American Archaeology, Washington, DC
 Mr. Brian Stockes, National Congress of American Indians, Washington, DC
 Mr. Donald Sutherland, US Bureau of Indian Affairs, Washington, DC
 Mr. Virgil Swift, Wichita Tribe, Anadarko, Oklahoma
 Mr. Arthur M. Taylor, Nez Perce Tribe, Lapwai, Idaho
 Mr. Russell Thornton, Smithsonian Repatriation Review Committee, UCLA, California
 Mr. Michael (Sonny) Trimble, US Army Corps of Engineers, St. Louis, Missouri
 Ms. Wendy Turman, National Museum of Health & Medicine, Washington, DC
 Mr. Christy Turner, Smithsonian Repatriation Review Committee, Arizona State University, Tempe,
 Arizona
 Ms. Anne-Marie Victor-Howe, Peabody Museum, Harvard University, Cambridge, Massachusetts
 Mr. Mike Volmar, Fruitlands Museum, Harvard, Massachusetts
 Ms. Tawanda Wallace, US Department of Justice, Washington, DC
 Mr. Andy Wallo, US Department of Energy, Washington, DC
 Ms. Lucy Whalley, US Army Corps of Engineers, Champaign, Illinois
 Ms. Betty White, National Museum of the American Indian, Bronx, New York
 Ms. Sue Wieferich, Rural Housing Service, US Department of Agriculture, Washington, DC
 Mr. Clyde (Joe) Williams, Upper Sioux, Rosholt, South Dakota
 Mr. Ron Wilson, US Department of Interior, Washington, DC
 Mr. Lawrence R. Wolfe, US Department of Agriculture, Rural Utility Service, Washington, DC
 Mr. John Wright, National Park Service, Bushkill, Pennsylvania

Ms. Pemina Yellow Bird, Three Affiliated Tribes, Lawrence, Kansas
Mr. Frederick York, National Park Service, Seattle, Washington
Mr. David Young, Washington Legal Foundation, Washington, DC
Mr. Terry Zontek, Bureau of Reclamation - Great Plains Region, Billings, Montana

Ms. Naranjo welcomed the new and returning Review Committee members and greeted members of the Smithsonian Review Committee present in the audience. Mr. Minthorn gave the opening invocation. The Committee members introduced themselves.

Introduction of New Members of the Smithsonian Repatriation Review Committee

Mr. Russell Thornton, Chair of the Smithsonian Institution Repatriation Review Committee, explained that due to a legislative amendment, the Smithsonian Repatriation Committee had two new members, Mr. Ronald Little Owl from the Three Affiliated Tribes, Fort Berthold Reservation, North Dakota and Mr. Richard Dalton from the Native Village of Una, Alaska. Mr. Thornton then introduced Ms. Andrea Hunter, Mr. Roger Anyon, Mr. Christy Turner, and the Committee Coordinator, Gillian Flynn.

National Park Service Welcome

Mr. Robert Stanton, Director of the Park Service, offered greetings to the Committee members on behalf of Secretary Babbitt, the Department of the Interior (DOI) and the NPS. He expressed his appreciation of the Committee members' work. Mr. Stanton stated that the members of the NPS embrace the intent and spirit of the NAGPRA Act, and he personally committed his support to the efforts of the Committee. Mr. Minthorn expressed a concern about lack of government-to-government consultation between the NPS and tribes, particularly in the Northwest. Mr. Stanton replied that the NPS has a total of seven regional directors, each overseeing a number of parks. He stated that he would communicate directly with the seven regional directors, who would communicate with the park superintendents, to enhance the communication and coordination between the NPS and tribes.

Review of the Agenda

Mr. McManamon welcomed the Review Committee members and members of the audience, and explained that the meetings are open to the public with scheduled public comment periods. He expressed his appreciation to representatives of Federal agencies and other organizations for attending the meeting and for their work in preparing presentations for the Committee concerning implementation of the NAGPRA statute. He then gave a brief review of the agenda.

Administration of Federal Advisory Committees

Ms. Miriam Chapman, with the Division of Law, DOI, explained the history and purpose of the Federal Advisory Committee Act (FACA). FACA was established in 1972 in order to promote balance and fairness among committees reporting to the Executive Branch of the government, by providing for open

meetings and balanced, public input. Each agency within the Executive Branch is allowed a certain number of committees, with DOI being allotted approximately 12. An advisory committee consists of a group that is established or utilized by the Executive Branch to obtain advice or recommendations; “utilized” meaning the committee is tied closely to an executive agency and has a quasi-public status. Advisory committees operate under group consensus or advice. Ms. Chapman explained that the NAGPRA Review Committee meets the requirements of an advisory committee under FACA.

One exclusion to FACA is the Unfunded Mandates Act which exempts intergovernmental communications from the requirements of FACA, such as meetings between Federal officials and elected officials of state, local and tribal governments who are acting in their official capacities and such meetings are solely for the purpose of exchanging views, information or advice that relates to the implementation or management of an existing program. Each portion must be met to qualify for the Unfunded Mandate exemption.

Ms. Chapman explained some crucial elements of advisory committees under FACA: decisions and recommendations shall be advisory in nature and based upon taking of evidence; a Charter shall be developed and approved; meetings shall be open to the public, with public notice given to all interested parties; interested parties shall be permitted to attend, appear before or file statements with the committee; and everything provided for committee consideration shall be made available for public consideration and copying, such as reports, statements, and letters. The Freedom of Information Act (FOIA) does apply to advisory committees, with the exception of personal notes. The formation of subgroups within advisory committees is acceptable for the purposes of fact-finding and fact-gathering; the subgroup must report its findings to the full committee as part of the open, public process.

Personal liability of NAGPRA Review Committee members is low, since the Committee members are acting as a group in making recommendations to the Secretary of the Interior. The Secretary is then responsible for making a decision regarding the recommendations. Ms. Chapman explained that the NAGPRA Review Committee members need to inform the other members and/or recuse themselves from any potential conflict-of-interest matters brought before the Committee. She explained that if the Committee, while acting under FACA, was cited in a lawsuit, the Justice Department would take steps to remove the Committee as a party to the lawsuit or defend the Committee. She encouraged the Committee members to call the Division of General Law with any questions regarding FACA matters.

Implementation Update

Mr. McManamon explained that each Committee member had a summary in their binder of the progress made in NAGPRA implementation since the previous Review Committee meeting in Norman, Oklahoma in March 1997.

Excavations/Discoveries on Federal/Tribal Lands

Mr. McManamon explained that the Committee members had information regarding Klamath Tribes v. USACOE, Bonnicksen v. USACOE and Asatru Folk Assembly v. USACOE in their binders for review, but no action was necessary regarding these cases on the part of the Committee members.

Museum/Federal Agency Collections

Summaries: Mr. Sam Ball reported that to date, NPS has received 1,018 summaries from institutions nationwide. He explained that 29 of the summaries have been entered in the NPS database, and he is currently working on completing this task. Mr. Bradley asked if NPS knew the approximate percentage of the total number of summaries that have been received. Mr. McManamon replied that NPS has received a large percentage of the total, since most of the medium and large museums have already submitted a summary. In response to Ms. Naranjo's concern about noncompliance of universities, Mr. McManamon explained that specific cases have been investigated. Mr. Sullivan asked when an accurate indication of the level of compliance will be determined. Mr. McManamon replied that although this information could be obtained, priority has been given to completion of inventories containing culturally unidentifiable human remains in an effort to repatriate those items. He added that the summaries are a description of the types of materials contained in a collection and an invitation for inquiry by tribes concerning those items, whereas the inventories are item-specific lists that sometimes contain time-sensitive issues. Mr. Hart inquired about a follow-up process for incomplete summaries. Mr. Ball replied that as he enters the summaries into the database, he has been double-checking with the museums regarding which tribes were contacted concerning the summaries and requesting any additional information that is needed. In response to Mr. Minthorn's concern about addressing noncompliance, Mr. McManamon stated that rather than reviewing all summaries in an effort to ensure compliance, museums or Federal agencies that are specifically cited as being out of compliance are being investigated.

Inventories: Ms. Kelley stated that as of January 13, 1998, the NPS has received 713 inventory submissions, of which 184 are completed inventories with only culturally unidentifiable human remains, representing over 110,000 individuals. Of the 713 inventories received, letters were sent to 213 institutions and Federal agencies regarding incomplete submissions, with a substantial response on the part of the institutions and Federal agencies regarding these letters. Mr. O'Shea inquired about the electronic format requirement of the inventory submissions, and added that his institution, the University of Michigan, was out of compliance due to not submitting their inventory in an electronic format. He asked what format should be used. Ms. Kelley replied the institutions and Federal agencies should provide instructions for accessing the electronic format they provide so the NPS would be able to access it, but conversion to the NPS database will have to be done manually. She added that this requirement is waived in cases where institutions and Federal agencies do not have electronic capabilities. Mr. Bradley asked about the number of inventory extensions and their status. Ms. Kelley replied that 58 institutions received inventory extensions, with ten outstanding to date. Extensions were originally for three years, with that term expiring at the end of 1998.

Notices: Ms. Kelley stated that as of January 28, 1998, 187 Notices of Inventory Completion had been published in the Federal Register covering 10,051 individuals and over 258,000 associated funerary objects, and 75 Notices of Intent to Repatriate had been published covering 37,702 unassociated funerary objects, 513 sacred objects and 177 objects of cultural patrimony, with 114 objects meeting the requirements for both sacred objects and objects of cultural patrimony. Currently, 70 notices await publication, and two to five new notices arrive each week. She added that the notices can be accessed on the NPS website, which is updated weekly.

Civil Penalties: Mr. McManamon reported that for any allegation of museum noncompliance, a careful evaluation of the facts of each case is undertaken. Currently, two cases of possible noncompliance are being investigated, with ongoing communication with each museum. He explained that the DOI, specifically the NPS, is responsible for investigation of allegations of museum noncompliance. Mr. O'Shea asked about Federal agency noncompliance, and Mr. McManamon explained that the Review Committee is responsible for overseeing Federal agency noncompliance and can review cases on a dispute-resolution basis. The most appropriate channel for a tribe or other interested party to take concerning possible noncompliance by Federal agencies should be to bring the issue to the NPS staff or before the Committee.

Providence v. Babbitt: Mr. McManamon reported that in the case of Providence v. Babbitt, et al., the Court has dismissed the Secretary of the Interior from the case, also effectively eliminating the NPS. He added that the judge has scheduled settlement talks between the Native Hawaiian organizations and the City of Providence, Rhode Island, and that the DOI was not asked to participate in the discussion.

Regulations

Future Applicability: Mr. McManamon explained that future applicability concerns how museums and Federal agencies handle items or human remains that come into their collections subsequent to the inventory and summary process. Future applicability text is currently circulating within the DOI. After final approval at the Assistant Secretary level and the Office of Management and Budget, the text can be published as final in the Federal Register.

Civil Penalties: Mr. McManamon stated the civil penalties regulations are currently in effect as interim regulations. The public comment process has been completed, and the final civil penalties regulations can be published in the Federal Register after completing the review process within the DOI and the Office of Management and Budget.

Technical Assistance

Grants: Ms. Murphy explained that two types of grants are available; documentation grants available to tribes or museums, and repatriation grants available to tribes. Approximately 2,000 Fiscal Year 1998 grant applications were mailed out in August 1997, with a tribal deadline of November 21, 1997 and a museum deadline of December 5, 1997. A total of 80 applications were received, 57 from tribes and 23 from museums, including three repatriation grant applications from tribes. Mr. Sullivan expressed concern for the lack of grant applications and asked for possible reasons. Ms. Murphy replied that perhaps some museums may feel that having submitted summaries and inventories, the process is completed. She encouraged museums to apply for grants to facilitate discussions with Indian tribes. She added that the grant process itself may be intimidating, and encouraged people to contact her with questions or comments regarding the grant application and process. Mr. Minthorn expressed concern about equal treatment for all tribes in the grant process, especially tribes with inadequate resources to fully participate in the process. Mr. Bradley encouraged museums to help tribes by sharing their expertise in the grant application process, in order to promote grant activity.

Training: Ms. Murphy explained that the University of Reno at Nevada continues to sponsor a

NAGPRA course, which will be offered a total of five times in 1998. The course was revised to include a legislative history of the NAGPRA law, an overview of current case law, practical exercises concerning NAGPRA and discussion of the grants program. The instructors are Mr. McKeown, Ms. Murphy and The Honorable Sherry Hutt, Phoenix, Arizona.

Worldwide Web: Ms. Murphy described the NAGPRA information that is available through sites on the Worldwide Web, including the NPS Links to the Past system and the National Archaeological database. She stated that the NAGPRA portion of the National Archaeological database had over 6,000 hits in 1997. She explained that a search engine is now available, which will be especially helpful for researching notice information for specific museums, tribes, or by types of objects. She also described the new Native American Consultation database, which provides specific information on tribes regarding the consultation process.

Proposed Amendments

Senate Bill 110, H.R. 749 and H.R. 2893: Mr. McManamon explained that the DOI has been working on a formal response to S. 110 and H.R. 749, and added that H.R. 2893 had not yet arrived at the DOI for comment. He described S. 110 as changing the NAGPRA statute in four ways: one, requiring written consent by tribes or Native Hawaiian organizations for excavation or removal of Native American human remains or funerary objects on Federal or tribal land; two, changes regarding notification of inadvertent discoveries; three, including associated funerary objects with culturally unidentifiable human remains, a past Committee recommendation; and four, requiring that monies recovered as part of civil penalties be provided back to tribes affected by such lack of compliance. He described H.R. 749 as generally recognizing the need for investigation or study of certain kinds of human remains or funerary objects that might otherwise fall under NAGPRA and a set of steps to carry out that investigation.

Mr. Bradley asked what the Committee's role was concerning proposed statutory changes. Mr. McManamon explained that the Committee can make recommendations to Congress or to the DOI concerning a response to the proposed statutory changes. He added that one of the parts of S. 110, concerning consideration of associated funerary objects with unassociated human remains, was a past Committee recommendation. Mr. Minthorn asked about tribal representation or involvement concerning the proposed legislation. Mr. McManamon stated that a number of offices concerned with tribal rights are involved in reviewing the proposed legislation, including the Indian Affairs Division with the Solicitor's Office, the Bureau of Indian Affairs, and the Assistant Secretary for Indian Affairs.

Role of the Department of Justice

Department of Justice (DOJ): Mr. Don Nicholson, attorney with the Criminal Division, DOJ, explained that the Criminal Division has a three-part role concerning NAGPRA, and more specifically, the trafficking statute, 18 U.S.C. 1170: one, working with the NPS in developing a source book of materials regarding NAGPRA which included statutory material, regulatory material, legislative history and relevant case law, and have continued to update these materials; two, acting at the home office level as a coordination and support center for United States Attorneys involved in prosecution of trafficking cases; and three, cosponsoring with the NPS an annual overview training course dealing with NAGPRA and

ARPA. Mr. Bradley asked about the wide discrepancy in sentencing of trafficking cases. Mr. Nicholson replied that discrepancies are due to lack of specific sentencing guidelines. He added that sentencing guideline proposals are currently being developed.

Federal Bureau of Investigation (FBI): Ms. Lynn Richardson, point of contact for NAGPRA issues at the FBI, stated that the role of FBI headquarters is to support the field offices in their investigation efforts. One priority is educating the field agents on NAGPRA, through trainings and information. She encouraged people to contact FBI field offices if potential trafficking situations arise. She explained that since NAGPRA is a relatively new law, it is difficult to prosecute NAGPRA trafficking cases, and added that agents and US Attorneys need support, through witnesses, liaisons, and informants. Mr. Bradley asked what steps could be taken if the field office decides not to pursue a certain situation under NAGPRA. Ms. Richardson explained in those cases, individuals could contact her office or the Office of Indian Country Investigations. She added that some cases could be prosecuted under other laws, such as interstate theft of stolen property, government reservation crimes or Indian Country crimes.

Compliance by Federal Agencies

Department of the Interior

National Park Service: Ms. Schansberg reported that the NPS issued a service-wide summary on October 27, 1993, which was then distributed to all Native American tribes, Alaskan Native villages and Native Hawaiian organizations. A total of 100 inventories were received from different parks. Of those, 55 were distributed to culturally affiliated tribes, 68 contain culturally unidentifiable inventories, and some pertained to both. A total of 26 Notices of Inventory Completion and five Notices of Intent to Repatriate were published in the Federal Register, and 39 Notices of Inventory Completion are in the review process, with three close to publication. Guidance information consists of a video and workbook that will be sent to both tribes and superintendents of parks in the near future, as well as guidelines with detailed step-by-step instructions pertaining to the different aspects of NAGPRA and a summary and inventory revision memo. She added that it is standard operating procedure with the NPS to maintain government-to-government relationships with tribes and engage in continual consultation.

Mr. Bradley asked to what extent the NPS has complied with NAGPRA. Ms. Schansberg stated that the NPS has complied fully with NAGPRA by meeting all deadlines for summaries and inventories, notwithstanding small changes that will be continually made as new information becomes available. Mr. Bradley then asked about how Memorandums of Agreement (MOA) fit legally in the compliance structure. Mr. McManamon replied that in both cases where MOAs were considered to deal with the disposition of certain Native American human remains and funerary objects, the MOAs were ultimately determined to be out of the perimeters of NAGPRA and the park superintendents involved are currently working to resolve issues of cultural affiliation in other ways. Mr. McManamon explained that the ultimate responsibility for determining cultural affiliation rests with the superintendents of each park. If tribes or museums feel a determination is inappropriate, the Committee could potentially become involved in resolving the dispute. Mr. Minthorn asked if there was a comprehensive list detailing compliance by region and by park. Ms. Schansberg replied that that information was available and could be organized in that manner.

Fish and Wildlife Service: Mr. Kevin Kilcullen, Federal Preservation Office for Fish and Wildlife

Service, explained that the primary goal of the Fish and Wildlife Service is to protect and restore the Nation's wildlife populations and their habitat. Two key programs of the Fish and Wildlife Service are directly involved with NAGPRA, the land management aspect and the law enforcement division. Fish and Wildlife Service has field offices in every state and most territories and possessions of the United States, including seven regional offices, over 700 field offices, 500 national wildlife refuges and almost 100 national fish hatcheries, encompassing over 92 million acres of land. Fish and Wildlife Service is a decentralized organization with most of the decisions being made at the regional office level or lower. In 1996, Fish and Wildlife submitted a consolidated inventory to the NPS, but due to a request for additional information and revisions, it is currently listed as incomplete. Fish and Wildlife Service has completed a summary, which will be submitted to the NPS. Day-to-day responsibility for NAGPRA issues rests at the regional office level. Fish and Wildlife Service does not have a line item budget for NAGPRA; funding comes from general funding for museum collections. All Fish and Wildlife offices are expected to follow the guidance set out in the cultural resource management and museum collections sections relating to NAGPRA issues.

Mr. Kilcullen then outlined some of the problems the regional offices have in dealing with NAGPRA issues, as follows: determining the appropriate tribes to contact regarding NAGPRA, especially in the Southeast; lack of information on existing collections; competing claims from multiple tribes for the same collections; small tribes' limitations and difficulty in responding to requests for information; tribal misunderstanding of NAGPRA, resulting in inappropriate requests for repatriation; and an active land acquisition program resulting in almost 100,000 new acres per year. He added that the Fish and Wildlife Service is in compliance with NAGPRA concerning the inventory and summary requirements concerning information available at the time of submission, and that inadvertent discoveries and intentional excavations will never be 100 percent in compliance due to its ongoing nature.

Mr. Sullivan asked about the extent of materials that would qualify under NAGPRA definitions. Mr. Kilcullen stated that the Fish and Wildlife Service inventory includes approximately 500 entries, some multiple, consisting of a relatively small percentage of their total archaeological collections. Mr. O'Shea asked about the efforts made to locate Fish and Wildlife collections held by other agencies or institutions. Mr. Kilcullen explained that while new collections are still being discovered, Fish and Wildlife did have a fairly good idea of where to look and are following up on all collections with letters and phone calls.

Bureau of Reclamation: Mr. Terry Zontek, NAGPRA Coordinator for the Great Plains Region for the Bureau of Reclamation, explained that the Bureau of Reclamation is found in the 17 western states and was formed in 1902 through the Reclamation Act to develop irrigation projects in the western states. That responsibility has evolved over the years to include flood control in municipal, rural and industrial water supplies. Currently the Bureau of Reclamation is involved mainly with water management issues, not developing large projects. Most of the archaeological collections of the Bureau of Reclamation originated from the development of large projects starting in the 1940s. Bureau of Reclamation is a decentralized agency with the main responsibility for NAGPRA compliance resting with the regional or area directors.

Ms. Myra Giesen, NAGPRA Contact with the Program Analysis Office for the Bureau of Reclamation, explained that the Bureau of Reclamation submitted an agency-wide summary in November of 1993, and each of the five regions submitted an inventory under the state headings of California, Idaho, Montana, Nevada and Utah, for total compliance under NAGPRA. The inventories encompass a total of 1,300 culturally unidentifiable individuals with approximately 60,000 associated funerary objects from 160 sites

that are currently held in 19 different repositories, and 150 affiliated individuals with 1,100 associated funerary objects from 18 sites that are currently held in six different repositories. The Bureau of Reclamation has published one Notice of Inventory Completion and no Notices of Intent to Repatriate. Inadvertent discoveries and planned excavations have mainly occurred on tribal lands and are dealt with on a case-by-case basis. Ms. Giesen explained that Bureau of Reclamation is working to develop better coordination between the regions and area offices to improve accountability on an agency-wide basis. Currently, the Bureau of Reclamation's Native American Affairs Office is developing consultation protocol for tribal consultation. Mr. Zontek added that some regional offices are working on developing comprehensive agreements with tribes such as the Oglala Sioux.

Bureau of Land Management (BLM): Ms. Stephanie Damadio, National Curator for the BLM and the DOI, described the Bureau of Land Management's responsibility to manage public lands, including the authorization of mineral extraction, timber operations, recreational development, and protection of the health of the cultural and natural environment. The BLM is the largest Federal land-managing agency and currently manages 270 million acres, approximately 41 percent of all lands under Federal ownership. Since 1812, individuals and institutions have been conducting scientific expeditions on public lands, excavating and collecting millions of objects, which were then transported to hundreds of non-Federal repositories, including universities, museums and historical societies over the past 185 years. In 1906, permits were issued under the Antiquities Act for Excavations, and in the mid 1980s, the BLM itself was specifically delegated permitting authority. Constant land transfers in and out of Federal control complicates the search for NAGPRA materials.

Research indicates that the BLM is responsible for one of the largest collections in the DOI, consisting of millions of museum objects, approximately 99 percent of which are housed in non-Federal repositories. The resources available to the BLM to accomplish NAGPRA tasks are limited. The BLM has 13 individuals primarily involved with NAGPRA, most of whom hold a variety of other responsibilities. To date, the BLM has completed the work toward the potential repatriation of 453 human remains and 7,167 objects, representing thousands of hours of inventory and analysis by non-Federal museums and BLM staff, as well as tribal work. This work has involved interaction with over 200 museums and approximately 150 tribes and Native Alaskan villages and corporations.

Mr. Bradley asked if the BLM had an idea of the number of human remains that are yet to be processed and the extent of BLM compliance under NAGPRA. Ms. Damadio stated that due to the vast number of individual occurrences of excavations that took place, that number may never be exactly determined. She explained that BLM feels it is in compliance with NAGPRA since it is currently working on a process to determine where BLM collections are located, and added that decades of work will be necessary to know the total universe of NAGPRA-related BLM collections. Mr. Bradley stated if the BLM is decades away from knowing their total NAGPRA-related collections, then they are out of compliance with the NAGPRA statute. Ms. Marilyn Nickels, Group Manager for the BLM, replied that part of the difficulty is that the permits were not issued by BLM and so BLM does not have those records. Attempts have been made to survey the records at the Smithsonian and at the NPS, which has been partially helpful. On the collection side, even if collections can be traced to a repository, most repositories do not maintain collections by the place of origination. The BLM is working with many museums who are conducting their own inventories, and until museum inventories are complete, it will be difficult to know what material is from BLM collections and what material is from the individual museum. In response to Mr. O'Shea's concern that Federal agencies be held to the same standard as museums, Ms. Nickels replied that the statement that this

task will take decades is an expression of the BLM's commitment to keep working on the job until it is complete.

Mr. Sullivan asked if tribes have been consulting the BLM concerning human remains discovered during the course of tribal review of records or if the BLM is informing tribes after the BLM discovers human remains or objects. Ms. Damadio replied that the BLM has been informing the tribes of any NAGPRA-related items, and the BLM is proactively contacting tribes and trying to begin consultation due to the lengthy process involved. Mr. Minthorn asked if the items being held in non-Federal facilities were being cared for in an appropriate, cultural manner, with no study being performed. Ms. Damadio stated that they are being cared for in a professional manner, but that noninvasive study would be necessary to help determine affiliation.

Mr. Michael (Sonny) Trimble, Corps of Engineers Center for Expertise for the Curation and Management of Archaeological Collections (CX-CMAC), explained that the Corps is responsible for two things, curation and collections management and the national NAGPRA program. He stated that since many Federal agencies do not have the resources to do this type of work, the Corps has contracted to do curation and NAGPRA-related work for Federal agencies, including the BIA and BLM. He explained the four-step program that the Corps has found to be the most effective in researching and locating Federal collections, as follows: one, extensive research at the Federal agency level; two, extensive research at the State Historic Preservation Office (SHPO) level; three, aggressive comparison of the data from both of these sources; and four, comparison of the data with collections currently in museums. He added that in recent work for the BIA in five states, he believes that the Corps found 95 percent of the BIA's collections, and the Corps is currently working on a Memorandum of Understanding (MOU) with the BIA to complete this work in four more states.

Bureau of Indian Affairs (BIA): Mr. Donald Sutherland, BIA, explained that the BIA has no known NAGPRA items on BIA-owned premises. All BIA collections are in non-Federal repositories. The BIA is currently working to repatriate a collection from one museum in Arizona, and is currently funding a four-year study with the Arizona State Museum at the University of Arizona to assess their collection, which contains between 3,000 and 4,000 human remains and their associated funerary objects. He also described a pilot program with the Northern Arizona Museum to assess repatriation costs in order to determine the magnitude of future costs of later repatriations, and added that Native American tribes are being consulted concerning these efforts.

Department of Transportation

Federal Aviation Administration (FAA): Ms. Ann Hooker, Federal Aviation Administration Historic Preservation Officer, described the functions of the Federal Aviation Administration as regulating commercial spaceport operations and space launches, navigable air space, air craft and airmen, with a primary mission of safety. She explained that the FAA actually owns very little land, as most airports are privately owned and are open for public use, with the exception of Washington National and Dulles airports. She explained that the FAA does not currently have any objects or human remains that fall under the provisions of NAGPRA, and added that the FAA is currently working on developing guidelines for inadvertent discoveries found on FAA land.

Federal Highway Administration (FHA): Mr. Bruce Eberle, Historic Preservation Officer for the Federal Highway Administration, explained that the FHA is a grant-and-aide agency and is not a land-managing agency. The FHA generally works as a contractor for Federal agencies building roads on Federal, tribal and state-owned lands. Discussions concerning any materials recovered during construction involve the Federal or state agency on whose land the objects were found and the appropriate tribe. Mr. Minthorn asked about coordination with tribes on these projects. Mr. Eberle replied that some states are aggressive in setting up periodic meetings with different tribes, while other states coordinate with tribes on a case-by-case basis when there are proposed projects in certain areas of the state. Mr. Eberle added that the FHA is working to develop an initiative that will inform more people about FHA public outreach and public participation programs.

Department of Agriculture (USDA)

Natural Resources Conservation Service (NRCS): Ms. Kathleen Schamel reported that the NRCS, formerly the Soil Conservation Service, is a technical assistance agency. The NRCS does not own land and has very few collections from cultural resource projects, which are curated in local museums or historical societies. The NRCS works directly with private landowners to implement conservation practices on their lands. She explained that in order to follow NAGPRA and National Historic Preservation Act requirements, each NRCS employee who will be on private lands is required to undergo a week-long cultural resource training program familiarizing them with the resources, the laws, and their responsibilities under these laws. Ms. Schamel explained that if cultural resources are found, The NRCS tries to leave the resource in place if possible; otherwise, a cultural resource specialist evaluates the resource and proceeds with mitigation and consultation with appropriate Native American tribes.

Ms. Schamel stated that the NRCS has five known collections currently housed in state or local museums, consisting of items not relevant to NAGPRA. She explained that three sets of human remains were found in New Mexico, two of which were reburied at the site in consultation with the local tribe and the other set of human remains were the result of a homicide and were turned over to the state police lab. She explained that in each state, the NRCS office has an agreement with the SHPO to address inadvertent discoveries of human remains, and provided two examples of these state level agreements to the Committee members. She described one successful project with the NRCS and the Klamath Tribe, which resulted in permanent protection of burials exposed by erosion.

Mr. Bradley expressed his appreciation of the NRCS's proactive work with tribes and encouraged them to continue. Mr. O'Shea asked about Federal responsibility versus private landowner responsibility. Ms. Schamel replied that the decisions regarding the amount of Federal involvement in the development and implementation of cultural resource projects is determined by the landowner. She explained that the NRCS only asserts jurisdiction over human remains or cultural items found when the owner forfeits jurisdiction. She stated that landowners have been very willing to work to protect cultural resources. Mr. Sullivan asked about the varying state laws regarding protection of burials on private land. Ms. Schamel explained that the NRCS contracted to have an analysis of state reburial and repatriation laws prepared, which was sent to all of the NRCS cultural resource specialists and coordinators. Mr. Minthorn asked how the NRCS and the SHPOs could help tribes become aware of the work of the NRCS. Ms. Schamel replied that the NRCS has a national programmatic agreement outlining their function, as well as requiring state level agreements between the NRCS and SHPOs and between the NRCS and tribes, although there have been no

tribal requests regarding development of these agreements to date. Ms. Schamel said she would address this issue with the NRCS Federal preservation officer and the Native American coordinator. She added that the NRCS would welcome tribal input on revision of their natural cultural resource training program in order to promote NRCS's programs with tribal representatives and governments and to improve consultation with tribes.

Rural Housing Service (RHS)/Rural Business Cooperative Service (RBS): Ms. Sue Wieferich, Environmental Protection Specialist and Federal Preservation Officer for the RHS and the RBS, stated that USDA Rural Development was created in 1994 through the combination of several agencies, and currently consists of the Rural Housing Service, the Rural Business Cooperative Service, and the Rural Utility Service. She explained that RHS and RBS are both grant and loan guarantee agencies for private individuals and businesses, and do not own or possess lands, unless by foreclosure, a rare occurrence. She added that in those instances, Rural Development is required to follow the provisions of the National Environmental Policy Act (NEPA) requiring environmental assessments before resale of any acquired property, including appropriate measures to protect any cultural resources present on the site. Ms. Wieferich explained that neither RHS or RBS have any collections, and therefore, have not filed any summary or inventory reports with the NPS.

Mr. O'Shea asked what steps would be taken if cultural resources were found on foreclosed property and asked if collections would possibly go into non-Federal repositories. Ms. Wieferich replied that all issues regarding cultural resources would have to be resolved before property could be resold, and resources are generally protected through easement or covenant, unless there was immediate danger to the resource. Mr. Minthorn expressed a concern that tribal consultation needs to be done.

Rural Utility Service (RUS): Mr. Larry Wolfe, Senior Environmental Protection Specialist and Federal Preservation Officer for RUS, explained that the RUS provides financing through its insured and guaranteed loan programs for construction and expansion of facilities that distribute electric power in rural areas and the development of water and waste disposal facilities in rural areas and small towns with populations of less than 10,000. The RUS does not own land and does not have any collections of Native American cultural items, and therefore, has not filed any summary or inventory reports with the NPS. Further compliance with NAGPRA on each project includes consultation with the appropriate agency officials with jurisdiction on the land resource; including SHPOs for private land, tribal historic preservation officers (THPO) for tribal land, and the appropriate cultural resource specialist of the Federal agency for Federal land.

National Forest Service (NFS): Mr. Evan DeBloois, Federal Preservation Officer for the NFS, explained that the NFS was established in 1905 and is the land-managing agency of the Department of Agriculture, currently managing 191 million acres of public land. The NFS is a multiple-use agency, accounting for approximately 25 percent of the recreational use of Federal lands in the US, as well as timber areas, watershed management for municipal water systems, mining interests, and grazing. The NFS is divided into nine regional offices with approximately 120 Forest administrative units. Activities on NFS land can be either NFS initiated and managed, or they can be permitted activities, such as installation of power lines or oil and gas pipelines.

Mr. DeBloois explained the majority of collections from prehistoric sites from NFS lands came from permitted activities; museums and universities on NFS land doing research, while a small amount came

from NFS initiated activities. In response to problems with the identifications of previously existing collections, pre-1905, the NFS initiated an effort nationwide to identify all NFS collections in the mid 1980s. The NFS discovered materials in approximately 135 museums and institutions in the US and elsewhere, including Moscow, Switzerland and Sweden; some collections have not been found.

Mr. DeBloois reported that summaries and inventories have been completed for all National Forests, except approximately six, with relatively few human remains being identified in most cases. The Southwest Region of the NFS, headquartered in Albuquerque, New Mexico, has the largest number of human remains with approximately 5,500, most of which are pre-1990, and have current repatriation efforts underway on approximately one-third, including 450 human remains recovered during the Roosevelt Dam construction in the 1920s. 1,100 human remains were collected since 1990 and are in the process of repatriation. Consultations have been held with 52 tribes to date.

The California Region of the NFS identified 150 human remains and have consulted with 40 tribes in the repatriation process; half of the human remains have been repatriated with the remainder in process. The Alaska Region identified 42 human remains and are ready to repatriate those human remains; however, lack of response from some tribes and intertribal conflicts are currently causing a delay in the repatriation process. The remaining regions have relatively small numbers of human remains: Intermountain Region identified no human remains or cultural items; Region One identified one individual; the Great Basin Region identified 17, half were repatriated and the remainder are in process; the Pacific Northwest Region identified less than 12 human remains. These human remains are primarily in museum collections, which in some cases is the cause of the delay. He added that in Alaska, a number of human remains were repatriated directly from the museum to the tribes; the NFS was only involved due to requests for reburial on NFS land.

Mr. DeBloois reported the NFS has completed 90 to 95 percent of their NAGPRA responsibilities, and are well on the way to repatriating the human remains and cultural items which have been identified and requested by tribes. He added that the NFS needs to clarify the discrepancies between the NPS list of completions and the NFS lists, to make sure the NPS has the complete information available.

Mr. Bradley expressed appreciation for the NFS's initiative and progress and inquired about fiscal constraints. Mr. DeBloois replied that the only fiscal concerns are in Alaska due to tribal requests to rebury human remains in caves on NFS land. Prior to reburial, the NFS is responsible to ensure the reburials will have no effects on other cultural resources. He explained that the NFS funded one full-time position to do the inventories. He added that an estimated cost to finance the reburials of human remains was \$5.5 million, but so far no tribes have requested that the NFS fund reburials. Mr. Minthorn asked if NAGPRA was a line item budget for the NFS. Mr. DeBloois replied that it was a priority but not a line item. Mr. Minthorn then expressed frustration with the NFS, stating that some regions considered sending a letter to tribes as adequate consultation. Mr. DeBloois replied that there are problems regarding tribal consultation within the NFS, and added that the NFS is drafting a set of consultation guidelines to strengthen performance at the field level, including the need for decision-making NFS personnel at consultations. Mr. O'Shea commented that the NFS does generate a lot of human remains on NFS land in Michigan, contrary to Mr. DeBloois's experience in the Southwest. Mr. O'Shea commented on instances where NFS individuals were unaware of NAGPRA requirements, even recently, and suggested guidelines might be necessary in order to get all Forests within the NFS at the same level of understanding and compliance in NAGPRA.

Mr. Sullivan asked about training programs for NFS archaeologists and any recommendations Mr. DeBloois might have regarding improved understanding and compliance of NAGPRA in the NFS. Mr. DeBloois replied the NFS has a NAGPRA training course called the Heritage Program, for the Heritage Specialists, which they are trying to offer in every NFS region, and are trying to establish a heritage management training course for line managers covering a variety of cultural resource acts. He added that the NFS is a line-management agency with four levels of management: the Chief of the NPS, the Regional Forester, the NFS Supervisor and the District Ranger, and support staff, and said this course should give the managers a better idea of their personal responsibilities in this process.

Mr. Hart expressed concern with the NFS issuing permits concerning areas with sacred sites without tribal consultation, as happened with the Northwest Cemetery Association case. Mr. DeBloois replied that case elevated the NFS's concerns regarding consultations with tribes involving a variety of topics, in an effort to become aware of concerns in advance of activities. Ms. Naranjo expressed concern about looting. Mr. DeBloois replied that the NFS has a law enforcement agency that is concerned with this issue and has been successful in prosecutions and arrests. However, the main problem in preventing looting, especially in the Southwest, is the large amount of land and small number of people. Mr. Minthorn expressed hope that the NFS would carry out their trust responsibility by managing all Forests in one manner and developing a consultation process on a government-to-government basis with tribes.

Department of Defense

Army: Mr. Lee Foster, Native American Program Coordinator with the US Army Environmental Center, explained that the Army Environmental Center's primary concern is cultural and natural resources on the 12 million acres managed by the Army. The Army's primary mission is to maintain a combat-ready trained force, calling for intensive management of Army lands. In 1994, the Army Environmental Center initiated a centrally-funded nationwide program to bring the Army into documentary compliance with NAGPRA, assisted by the CX-CMAC St. Louis District. Of the 167 installations investigated, 97 required preparation of a section 6 summary, which were completed in September of 1996. These reports included listings of tribes potentially interested and affiliated with NAGPRA items. Twenty installations required section 5 inventory reports, which were completed in September of 1997. Individual installations were responsible for initiating consultation and affecting repatriation to the appropriate tribes. In an effort to comply with NAGPRA, the Army developed Army Regulation 200-4, directing installation commanders to comply with NAGPRA requirements as well as the full range of statutory and regulatory requirements of concern to Native Americans. He added that the Army has used examples from other agencies in developing processes and MOAs.

Army Corps of Engineers: Mr. Paul Rubenstein, Army Corps of Engineers, stated that the Corps' primary mission includes navigation, flood damage control, recreation and environmental management, and manages roughly 10 percent of total Federal lands. The Corps is organized into 39 districts overseeing 459 lakes. Individual Corps districts pursued first steps toward NAGPRA compliance in 1993, with a Corps-wide program initiated in December of 1994 managed by the CX-CMAC St. Louis District, with help from contractors in the three CX-CMAC districts. The Corps reviewed an estimated 141,000 cubic feet of archaeological collections with an estimated 3,660 skeletal remains. NAGPRA was funded as a line item beginning FY 1995.

Mr. Rubenstein stated the CX-CMAC's missions include NAGPRA compliance, management of archaeological collections for the Corps, and assisting other DOD services and government agencies, which will be accomplished through a wide range of specialists within CX-CMAC. One of the biggest jobs related to the NAGPRA process is locating the collections within the various curation facilities around the country. To date, all Corps collections have been identified in the Western and Central parts of the country, and slightly more than half have been identified in the eastern part of the country.

Of the 39 Corps districts, 100 percent have initiated section 6 summary research and 46 percent have completed summaries, 64 percent have initiated section 5 inventory research and 14 percent have completed inventories, and consultation has been initiated in 75 percent of Corps offices. The Corps is working on consultation guidelines similar to the Army guidelines, to promote better understanding within the individual districts regarding consultation and developing consultation processes. The Corps estimates all collections will be located by FY 1999, all inventories will be completed by FY 2007, and all reports to tribes and the NPS will be completed by FY 2008. Mr. Rubenstein added that even though NAGPRA is a line item, the Corps still does not have adequate funding to properly execute NAGPRA processes, although they are trying to increase the amount yearly.

Mr. Minthorn asked who the CX-CMAC contractors are. Mr. Rubenstein said he would provide the names to Mr. Minthorn. Mr. Bradley congratulated the Corps for making NAGPRA a line item and encouraged them to seek assistance for funding problems. Mr. O'Shea asked about accuracy in locating Corps' collections. Mr. Trimble explained that the processes for locating human remains are thorough, and they feel they are probably within 3-5 percent of locating all human remains. Mr. Minthorn expressed concern about tribes being unable to repatriate related human remains and associated funerary objects due to the Corps' estimated completion of inventories in FY 2007. Mr. Rubenstein replied that the Corps is trying to ensure flexibility within the consultation guidelines to allow district commanders to work with tribes in that sort of situation. Mr. Hart commended the Corps for actions taken with regard to the inadvertent discovery of human remains on Canton Lake in Oklahoma and the consultation and subsequent reburial that took place.

Navy: Mr. Kathleen McLaughlin, Consultant with the US Navy, stated that the Navy is a decentralized organization, with NAGPRA responsibility delegated to the commanding officer at each installation. Each installation received a program note outlining responsibilities under NAGPRA. Individual institutions can request funding to bring themselves into compliance. An informal survey found the majority of Navy collections containing NAGPRA items to be in the western US. The Navy contracted with CX-CMAC to inventory all Navy collections for NAGPRA components and complete summaries and inventories when indicated. Most Navy collections in the western US have completed inventories as of January 1998. The eastern US has yet to be inventoried, although those installations feel they have very few objects applicable to NAGPRA. The CX-CMAC report on Navy collections is expected to be completed in September of 1999 detailing the locations of NAGPRA objects, at which time applicable inventories and summaries will be completed.

The Navy is currently working on training personnel to deal with inadvertent discoveries, due to problems with inadvertent discoveries found on Navy installations. The Navy has developed extensive training and guidance programs including an introductory class presenting an overview of all historic preservation legislation, including NAGPRA; a historic preservation law and section 106 class, which includes a two-

hour NAGPRA section; a week-long Native American Traditions and Cultures course developed in consultation with Keepers of the Treasures, with at least 50 percent of the instructors being Native American. The Guidance includes development of the US Navy and Marine Corps Guide to Native American Groups, which contains tribal information and consultation guidance, and the Twentieth Century Warriors brochure, designed to break down barriers between military personnel and Native Americans.

Mr. Hart asked Ms. McLaughlin to comment on human remains discovered at Pensacola, in which the consultation and reburial occurred with non-Federally recognized groups. Ms. McLaughlin replied that situation occurred at the same time the final regulations were being published, and unfortunately the situation was not handled according to regulations. The Navy is working on advising Pensacola on correct consultation procedures. Mr. Minthorn asked how the Navy will bring all installations to the same level of understanding and compliance with NAGPRA and tribal consultation. Ms. McLaughlin replied the Navy is working with the DOD to develop draft policy principles for DOD activities in Indian country and on tribal trust resources, as well as developing internal policies for consultation processes and compliance with section 3 inadvertent discoveries.

General Services Administration (GSA)

Ms. Constance Ramirez, Federal Preservation Officer for the GSA, reported that the GSA has no NAGPRA collections.

Department of Commerce (DOC)

Ms. Stephanie Klodzen, Office of Real Estate Policy and Major Programs, stated that the DOC is a diverse agency comprised of 12 bureaus, two of which are land-holding agencies, the National Institute of Centers and Technology (NICT) and the National Oceanic and Atmospheric Administration (NOAH). Combined, NICT and NOAH control about 14,000 acres and do not have any collections of Native American human remains. She described one project in Boulder, Colorado where a successful MOA was developed to deal with inadvertent discoveries on a project, although none were found, and one situation where a proposed NOAH laboratory in Alaska was relocated to avoid disturbance of Native American artifacts.

Department of Energy (DOE)

Mr. Andy Wallo explained that the DOE has a comprehensive cultural resource management program, which covers NAGPRA. Site-specific cultural resource management plans will be prepared for each site under the guidance for the DOE-wide program. In addition, field offices are provided guidance from the NPS, general NAGPRA information, and other agencies in order to achieve comprehensive programs and compliance. The Federal Historic Preservation Officer for the DOE is responsible for managing the cultural resource management program, including NAGPRA compliance. The DOE sites have been informed about and directed to proceed with NAGPRA requirements, and all major sites have compiled the summary and inventory information. The designated historic preservation contact at each DOE site ensures compliance with consultation requirements of NAGPRA. DOE sites are strongly encouraged to seek and identify Native Americans who have cultural affiliations with the sites and DOE controlled lands.

Site management mechanisms are developed to provide tribal representatives with information regarding all site activities. Tribal committees developed by the tribes are involved in NAGPRA-related decisions where multiple tribes are affiliated with a site. DOE currently has MOAs with tribes regarding the Nevada, Idaho, and Washington sites, and the sites are required to undertake comprehensive archaeological survey work to discover locations of archaeological sites and likely locations of burials in the early planning stages of any land-use decisions. On-site monitors at many sites include tribal representatives. The DOE attempts to identify Indian tribes and Native Hawaiian organizations who might have affiliation with an area that could be disturbed by a project. The DOE has provided guidance and cultural sensitivity training for all personnel, in most instances with tribal representatives participating in the training. A long-term initiative that the DOE is considering is including their cultural resource program guidance and policy statements in a DOE directive.

Mr. Minthorn asked if NAGPRA was a budgeted line item in the DOE. Mr. Wallo replied that the DOE is trying to have NAGPRA integrated into the mission of the DOE program and each site would have NAGPRA as part of their operations, rather than a stand-alone item. Mr. Minthorn expressed concern with DOE sites that were behind in understanding and complying with NAGPRA. Mr. Wallo replied that the DOE is working to get all sites at similar levels of understanding and compliance, through the DOE directive and active steps with individual sites.

Discussion on Federal Compliance

Members of the Committee: Mr. Bradley expressed an appreciation for the number of Federal agencies reporting to the Committee, but stated what was not clear was the difference between the perceived level of compliance at the top of agencies and the reality of compliance at the field levels. He stated the major agencies the Committee members should focus on are DOI, NPS and BLM; DOD, Army, Army Corps of Engineers, Navy and Marines; USDA, NFS. He stated four major issues seemed to occur in the discussions: one, NAGPRA compliance must be an agency priority; two, agencies need to understand that compliance goes beyond the documentary requirements of NAGPRA and includes long-term tribal consultation on a government-to-government basis and following the requirements of the inadvertent discoveries section of NAGPRA; three, agencies have a lot of opportunity for interagency cooperation and assistance, including databases, training workshops and guidance; and four, agencies should be able to cooperate in funding strategies. Mr. O'Shea added that accountability goes along with consultation and needs to be considered.

Mr. Bradley explained that public requests for information under the Freedom of Information Act (FOIA) has decreased tribal willingness to reveal sensitive information and materials. Mr. McManamon stated that NAGPRA does not prevent FOIA requests. Exemptions from FOIA do occur under the National Historic Preservations Act (NHPA) and ARPA, and consultation concerning those issues can be exempted, so it would be possible to shield information if discussions relevant to NAGPRA occurred simultaneously with discussions under ARPA and NHPA.

Mr. Sullivan suggested a statement to the Secretary of the Interior that at the operational level both the BLM and the NPS need a lot more attention on the priorities of NAGPRA, i.e., consultation and government-to-government processes. He added that although the Secretary and the Review Committee

cannot independently approach Federal agencies and demand compliance, individuals should approach their representatives regarding implementing another round of oversight hearings on the issue of Federal agency compliance.

Mr. Sullivan agreed to work with Mr. Bradley to prepare specific areas for discussion regarding Federal agency compliance with NAGPRA at the next Committee meeting. Mr. Minthorn asked about a process to hold Federal agencies accountable for requests of the Committee at the current meeting. Mr. McManamon stated the NPS could develop a summary of Federal agency presentations, to be shared publicly. Mr. O'Shea agreed and added that highlighting agencies who are not in compliance may have a positive effect and bring about priority changes within those agencies.

Culturally Unidentifiable Human Remains

Current Status and Next Steps: Mr. Sullivan stated that the Committee is charged with developing a set of recommendations for the Secretary of the Interior regarding the disposition of culturally unidentifiable human remains. Mr. McManamon stated that two sets of recommendations were developed by the previous Review Committee and were published in the Federal Register for comment, one in June 1995 and one in August 1996, copies of which were in the Committee members' binders; both sets of recommendations received a large number of comments from the public. Discussions of the recommendations at subsequent Committee meetings resulted in a sense of frustration on the part of Committee members with the process of developing recommendations and alternatives were discussed. At both the Norman, Oklahoma and the Myrtle Beach, South Carolina meetings, the Committee members discussed different forums for developing recommendations on the disposition of culturally unidentifiable human remains.

Mr. Bradley asked for a summary of what qualifies as culturally unidentifiable human remains under the law and for clarification of the exclusion of associated funerary objects with culturally unidentifiable human remains under the purview of the Review Committee in making recommendations to the Secretary; was that exclusion a simple drafting error or a deliberate compromise in the drafting of NAGPRA. Mr. McManamon first apologized for the offensive nature of the general concept of culturally unidentifiable human remains, and stated that the use of that term was for accuracy in terms of the law. The definition of culturally unidentifiable under the law is human remains for which cultural affiliation could not be determined reasonably. Cultural affiliation is defined as a reasonable connection between a past or ancient group and a contemporary Federally recognized tribe or its lineal descendants; if any of those components do not exist, then human remains are considered culturally unidentifiable.

Mr. McKeown addressed the exclusion of associated funerary objects in the treatment of culturally unidentifiable human remains. He explained that within the NAGPRA law, objects in collections can be claimed in two ways, through lineal descent or through cultural affiliation; if neither of those apply, the human remains are considered culturally unidentifiable. In the excavation provisions of the law, human remains can be claimed by lineal descent, by a tribe when human remains or objects are found on tribal land, or by aboriginal occupant using the land claims map. Within the statute, cultural affiliation involves both a spatial and temporal component and is a higher priority than aboriginal territories. Mr. McKeown stated that the concept of culturally unidentifiable human remains appeared very late in the legislative history of NAGPRA, in H.R. 5237 introduced by Senator Udall on July 10th, 1990. It occurred in two

versions of that bill and in two versions of S. 1980, introduced by Senator Inouye. In each of those bills, the term occurred only once and was exactly the same as it appears currently in NAGPRA.

Request by the State of Minnesota: Mr. Dallas Ross, Chairman of the Upper Sioux Community in Minnesota and Chairman of the Minnesota Indian Affairs Council, thanked the Committee for allowing him to testify. Mr. Ross stated that this issue is important to all Indian people living in Minnesota and the surrounding states, as well as all people living in Minnesota. However well intentioned, NAGPRA did more harm than good regarding repatriation of culturally unidentifiable human remains in Minnesota. Minnesota developed a reburial program, the Minnesota Native American Reburial Project, in 1991, which is overseen by the Minnesota Indian Affairs Council, an organization of all 11 Federally recognized tribes in Minnesota. The program has very strict guidelines and procedures for the repatriation of affiliated and culturally unidentifiable human remains. The program has four components: one, to identify Native American human remains existing in various collections in the state; two, to create an inventory and database of all available information regarding these human remains and associated burial items; three, to identify the individuals and prepare the human remains and associated burial items for reburial; and four, to arrange for the reburial ceremonies. Since the implementation of the Minnesota reburial law, approximately 1,000 human remains have been reburied. Since NAGPRA was enacted, repatriation efforts have been stopped on approximately 1,500 human remains which have been conclusively determined to be culturally unidentifiable. Under NAGPRA, the human remains will remain in institutions indefinitely, since cultural affiliation will not be determined.

On behalf of the Dakota people, the Minnesota Indian Affairs Council, the State of Minnesota and the Minnesota archaeological community, Mr. Ross asked the Committee to allow the Minnesota Indian Affairs Council to repatriate these human remains and associated burial objects for reburial to the tribal communities presently residing in the regions where the human remains originated. He stated he was not claiming the human remains themselves, but claiming the right to return them to who they rightfully belong to, the earth and the Creator.

Mr. Joe Williams, Upper Sioux Tribe, stated that he has been involved in repatriation issues for a number of years, and repatriation used to be a simple process. Oral history describes Native ancestors and their past. Traditions changed among the Native Americans who traveled across the country depending on their circumstances, and those changes have to be considered. Initially, Dakota people were happy when NAGPRA passed because they believed they could repatriate their ancestors' remains, but eight years later they are still unable to repatriate these human remains. NAGPRA is too complex for people to understand.

Mr. Mark Dudzik, Minnesota State Archaeologist, read a letter sent to the Committee members on December 17, 1997, requesting to repatriate culturally unidentifiable human remains and associated funerary objects recovered from Minnesota sites to the Minnesota Indian Affairs Council, on behalf of a coalition of Minnesota organizations representing the State's American Indian community, academic community, archaeological community, and the State of Minnesota itself. He stated that the submitted inventories documentation greatly exceeds the minimal requirements of NAGPRA and conclusively demonstrate that these prehistoric human remains are not readily associated with contemporary Indian people, nor will a connection of that sort be established in the foreseeable future. He stated that NAGPRA in effect has disturbed the repatriation processes occurring in Minnesota, processes which had been formed by the people most affected, the tribal people of the state of Minnesota. In completing the inventory in September of 1997, 500 affiliated human remains and 1,500 culturally unidentifiable human remains were

listed. The proposed repatriation is a local solution, with support of the affected people, the people of the state of Minnesota, tribal and academic.

Ms. Naranjo asked if contact has been made with descendants of past inhabitants of the Minnesota area and what their feelings were regarding this issue. Mr. Dudzik replied that while some potentially affected communities have been contacted, others would need to be consulted. Mr. Ross added that some groups that historically occupied the Minnesota area are either nonexistent or so diminished that it is difficult to locate them, even though efforts have been made to contact descendants of these groups. Mr. Ross stated that even if affiliation of the human remains could not be determined, they would be more closely affiliated to the people that had occupied the area the longest, the Native American people, and certainly not European or Spanish people. Mr. Minthorn asked what would happen if there was a tribal disagreement concerning human remains. Mr. Dudzik replied that the goal of the process would be to discuss the process as a solution mutually agreeable to any affected parties. He felt that any disputes would be worked out about between the Indian Affairs Council and the community that voiced the concern. Mr. Minthorn clarified that rather than a dispute about the human remains or the process that he was concerned about possible disputes regarding reburial locations. Mr. Ross replied that he would be open to offers for space for reburials due to limited space in Minnesota. Mr. Williams added that tribal spiritual practitioners would not argue or have disputes among each other, but will do the reburials in an honorable way.

Mr. O'Shea asked about the number of prehistoric human remains compared to relatively recent human remains within this group of culturally unidentifiable and what types of data recording had been done. Mr. Dudzik replied that approximately 90 percent would be more ancient people. All data collection is at the discretion of the Minnesota Indian Affairs Council. Data recording has included anthropometric measurements, review of site records and circumstances of burial recovery, examination of funerary objects, and some instances of x-ray and radiocarbon and AMS dating. Mr. O'Shea asked what would happen with the information obtained from data collection regarding these human remains. Mr. Dudzik said he would need to consult with the Minnesota Indian Affairs Council regarding the information. Mr. Ross clarified that the Minnesota Indian Affairs Council has made extensive efforts to consult with all affected tribes and will continue to consult with any tribes that have possible affiliation with the area.

Mr. Hart stated he was in favor of a process to allow this program to continue, and added that some of the human remains were his ancestors. Mr. Bradley expressed appreciation of the presentation by the group and also thanked them for demonstrating a model for dealing with culturally unidentifiable human remains. He apologized for NAGPRA slowing the Minnesota repatriation process down. Mr. Minthorn expressed his understanding and support for the repatriation actions of this group, and he expressed the need for the reburial of ancestral remains. Ms. Naranjo appreciated the joint efforts of the various groups in trying to repatriate these human remains.

Request by the State of Iowa: Mr. Sullivan stated before the Committee can make a recommendation regarding the State of Iowa request, further consultation with Federally recognized tribes needs to occur. Ms. Naranjo expressed appreciation for the different agencies and tribes working together on repatriation issues. Mr. O'Shea asked about the legality of states proceeding with repatriation under state law. Ms. Mattix replied that under the supremacy clause of the Constitution, Federal law supersedes state law, so the states would need to follow NAGPRA regulations. She added the Committee members could make a recommendation to specific states to continue their processes.

Final Discussion on Requests from the States of Minnesota and Iowa: Mr. O'Shea agreed with making a recommendation regarding the requests from the States of Minnesota and Iowa, but added that he did not think the recommendations should apply to any other programs without further consideration of each case. Mr. Minthorn stated the Committee or the NPS needs to develop a specific process so that a separate recommendation would not be necessary for each situation.

Mr. Bradley stated he had three areas he would like clarified: one, it was his opinion that associated funerary objects could not be included with human remains in this process; two, whether culturally unidentifiable human remains would be treated differently due to their reason for being considered culturally unidentifiable, i.e., lack of information, lack of documented connection with present-day tribe, connection with non-Federally recognized tribe, no connection with present-day tribes; and three, whether the process of recommendations for these situations would result in regulations being developed for the process of dealing with culturally unidentifiable human remains. Ms. Mattix and Mr. McManamon replied that the law appears clear about dealing only with culturally unidentifiable human remains and not associated funerary objects, but that further research on the topic could be done. The question of developing regulations out of any recommendation would depend on whether the law grants the Secretary authority to implement regulations concerning culturally unidentifiable human remains.

Mr. McManamon suggested the following questions be presented to the States of Minnesota and Iowa concerning their requests; one, whether the States would be able to categorize the human remains (as discussed previously by Mr. Bradley) in order to have different treatment processes; two, a process of identification of which sets of human remains would be repatriated; three, whether the States would provide pertinent information regarding study of human remains and provenience data; four, whether the States would provide formal documentation regarding discussions with other groups; and five, whether the States would disclose specific repatriation details for possible location of sites should the human remains be identified at a later date.

Mr. Minthorn expressed concern about further categorization of human remains, and stated that categorization subjects human remains to risks and disrespectful treatment. Mr. Sullivan suggested the NPS try to formulate lists of concerns and suggestions prior to Committee meetings in order to expedite the process, and added that he hoped there would be formal closure of these requests at the current meeting. Mr. Ross added the requested information either has been compiled or is currently in the process. He explained that regarding study information, he would recommend that information be available to the public. He invited the Committee to Minnesota for a future meeting. When asked about inclusion of associated funerary objects with culturally unidentifiable human remains in the repatriation process, Mr. Ross replied that those have been included in past repatriations; however, if the law excluded the associated funerary objects, the Minnesota Indian Affairs Council would proceed with repatriation of culturally unidentifiable human remains with the hope of later repatriating the associated funerary objects.

After discussion, the Committee members each supported the following statement to be submitted to the Secretary of the Interior: The Review Committee endorses and recommends approval of the requests from the States of Iowa and Minnesota to rebury culturally unidentifiable human remains within their possession or control, with three provisions; that appropriate documentation be provided by all Federally recognized tribes within those jurisdictions concurring with the plans for repatriation, including an opportunity for any group within the process of BIA recognition to comment on the plans, that the information recorded on the culturally unidentifiable human remains be considered public information, and that the requests comply

with all technical aspects of NAGPRA.

Request by Fort Clatsop National Memorial: Ms. Cynthia Orlando, Superintendent of Fort Clatsop National Memorial in Astoria, Oregon, described a repatriation issue concerning the Chinook, which is non-Federally recognized, and Fort Clatsop National Memorial. As a result of a gift in 1962, Fort Clatsop National Memorial has possession of one human skull and certain associated funerary objects removed from the vicinity of Seaside, Oregon in 1925. Excellent documentation of the occupation and use of the area dates back to the early 1800s. The Chinook is the contemporary successor group to a number of local bands, including the Clatsop. The Chinook have long expressed interest in repatriating the human remains and funerary objects. The Chinook are currently seeking Federal recognition and are confident that their status will be returned. The Chinook asked Fort Clatsop to move ahead with repatriation efforts. Ms. Orlando asked for a recommendation from the Review Committee to the Secretary for deaccessioning the Clatsop materials from NPS collections and repatriating them to the Chinook, and added the Chinook would be submitting a tribal resolution in support of the request in early February.

Mr. Bradley asked who and where are the closest Federally recognized tribes. Mr. York, anthropologist for the NPS in Seattle, Washington, stated the closest Federally recognized group within Oregon is a confederacy called the Siletz Tribe, approximately 100 miles south, and within Washington it is the Shoalwater Bay Tribe, approximately 100 miles north. Mr. Sullivan explained that under the statute only Federally recognized tribes can participate in repatriation; one solution has been repatriation to a non-Federally recognized group with the consent and participation of Federally recognized tribes in the region. Mr. York explained the Shoalwater Bay Tribe has offered to act in that capacity, but the Chinook Tribe was not comfortable with that method. Ms. Naranjo suggested the tribe work with the Shoalwater Bay Tribe in repatriating the human remains. Mr. Sullivan agreed and added that although the affiliation between the human remains and the Chinook is well documented, the law is clear regarding requirements for participation in repatriation, and repatriation in the manner desired by the Chinook is not possible without Congressional amendment to the law. Mr. Bradley recommended the next step in moving toward repatriation would be that the Chinook get letters from the nearest Federally recognized tribes endorsing the repatriation. Ms. Orlando suggested a letter from the Committee would clarify the situation. Mr. Sullivan agreed.

Request by California State Parks: Mr. Bradley explained that the request from the California State Parks involved eleven pieces of human remains, representing several individuals, and funerary objects. Mr. Sullivan stated that the records did not contain any adequate consultation with Federally recognized tribes. Mr. Bradley suggested the Committee members respond, that although they appreciate the initial submission, further documented consultation needs to occur with area Federally recognized tribes. Mr. McManamon agreed to draft a letter to the California State Parks regarding the issue.

Discussion of DOE Fernald Site: Mr. Bradley, responding to presentations from members of the Native American Alliance of Ohio, stated that the actions taken by the DOE at the Fernald Site, subsequent to the Norman, Oklahoma meeting, regarding a specific set of culturally unidentifiable human remains need to be clarified as not setting a precedent. He reviewed portions of the transcript from the Norman, Oklahoma meeting, where the situation was initially introduced to the Committee, and concluded that while retention of culturally unidentifiable human remains in the ground was discussed during the meeting, comments from Committee members ultimately resulted in statements that the DOE needed to finish consultation with the groups that appear to have a connection with the human remains.

Mr. Joseph Schomaker, Federal Cultural Resource Coordinator for Fluor Daniels at the DOE Fernald Site, explained that DOE did consult with the Federal tribes and all interested parties, and proceeded with retention in the ground of the human remains in a designated area at the Fernald Site. The human remains would be accessible if tribes claimed the human remains in the future. Mr. O'Shea asked how the human remains were being held in the ground. Mr. Schomaker responded that he could not reveal the details, except to say that the process was completed through consultation with spiritual leaders. Mr. O'Shea stated that unless there was a specific recommendation by the Secretary, there was a violation of the law. Mr. Schomaker explained that at the Norman meeting, it was not clear whether the situation actually came under NAGPRA, since the human remains were part of a deed of gift to the DOE. Mr. McManamon stated that when the DOE accepted responsibility, the human remains became part of a Federal collection, and therefore came under NAGPRA regulations.

Mr. McManamon raised two issues from the point of view of the NPS; that no documentation was provided regarding consultation from Federally recognized tribes and no information provided regarding the appropriateness of the curation method. Mr. Bradley stated that he did not feel that these actions were illegal; the group retained the human remains in a particular manner. Mr. Bradley emphasized that these actions were not a repatriation or a reburial, but simply retention of the human remains until the Committee can make a recommendation. Mr. McManamon explained that although the DOI is not against the reburial of skeletal remains and funerary objects, retention in the ground, as it occurred at the Fernald Site, was not the intention of the DOI in its letter to the DOE.

Discussion of Chaco Canyon: Mr. O'Shea asked about the status of repatriation of culturally unidentifiable human remains at Chaco Canyon. Mr. McManamon stated that due to procedural problems during the repatriation process, the Park is currently investigating the issues of cultural affiliation further before making any determination about appropriate steps to take regarding the situation.

Committee Members: Mr. Sullivan suggested that the new Committee members receive minutes of past Committee meetings relevant to the issue of culturally unidentifiable human remains and copies of all comments received in response to the two draft recommendations regarding treatment of culturally unidentifiable human remains. Mr. Hart reminded the Committee of Mr. William Tallbull's statements in February 1995 urging the Committee to make recommendations regarding culturally unidentifiable human remains, and stressed the importance of holding the Tallbull Forum to help resolve this issue. Mr. Sullivan added that efforts are underway to develop the Tallbull Forum, which could occur in September or October 1998.

International Repatriation

Keepers of the Treasures' Report on International Repatriation: Ms. D. Bambi Kraus, Executive Director of Keepers of the Treasures, explained that Keepers is a membership organization whose members, including tribes, Native and non-Native individuals, give direction to a 15-member board of advisors and give feedback from their regions on regional priorities. One of the current projects for Keepers is an Administration for Native Americans Grant to look at international repatriation. Ms. Kraus is working on that report, along with Ms. Connie Hart Yellowman and Mr. Eddie Ayau. The report will create a record of what needs to be accomplished for outstanding items, including human remains, located

in collections outside of the US, and will include a list of case studies and the countries that have been contacted to work with Native tribes on items held in their collections. She explained that Keepers does not participate in repatriation, only individual tribes can participate. She provided a list of case studies that will be included in the report to the Committee members. St. Lawrence Island groups have worked with Switzerland to have 242 ancestral remains and 554 associated funerary objects returned to Alaska, raising the concern of how long the process takes. Canada and Denmark have also worked well with Native Americans and Native Hawaiians. Germany and England still have some legal and policy issues to address within their own countries before they will be ready to return any items.

In addition to this report, Keepers is creating and collecting resources for tribes and museums relevant to the issue of international repatriation, such as recent reports containing lists of collections in foreign museums and a database developed by a researcher from the United Kingdom (UK) concerning Native American human remains sent to the UK and European museums and institutions. The last part of the report would be issues concerning the future of international repatriation: one, having an organization, such as Keepers, serve as a clearinghouse of information specific to international repatriation; two, an organization working in a policy development role, for example, to encourage the US Federal Government to work more with retrieving human remains and objects, to standardize a process for tribes and foreign institutions to follow, or to review the NAGPRA Act to determine the feasibility of amending the Act to include provisions for international repatriation; and three, formal recommendations for the success of international repatriation, including compilation of foreign laws and receiving institution practices on the American side. She added that it is important not to give up on international repatriation because it is a long process, many times taking a minimum of two to three years to complete a repatriation.

Mr. Bradley commended Keepers on their work, and asked specifically about the number of Chugach human remains listed on the case study list. Ms. Kraus replied that she was uncertain of the exact number but it was less than the amount repatriated by St. Lawrence Island. Mr. Bradley then asked about the differences in foreign countries' willingness to repatriate human remains, i.e., Denmark compared to Germany or England. Ms. Kraus replied one reason may be that Denmark obtained an Antiquities Act permit to excavate from Alaskan soil, with a provision that collections would be returned and permanently housed in Alaska. Mr. Minthorn recommended that the NPS work to develop a process of dealing with foreign countries on a government-to-government basis to assist tribes with international repatriation and help tribes stress the importance of international repatriation directly to the foreign countries. Mr. McManamon replied that if the Committee members would like to see that action, the NPS could work on that with the Keepers of the Treasures and the State Department and report to the Committee at the next meeting. Mr. Minthorn suggested that Native Americans foster a relationship with foreign countries who are very empathetic and sympathetic toward Native Americans, possibly through the media, and these relationships might help create a process to facilitate repatriation.

Mr. Sullivan explained that other developments of interest to tribes are occurring regarding international repatriation: one, recently more European countries are ratifying and becoming signatories to the Unesco Convention on Cultural Property; two, in April 1997, the United States and Canada signed an agreement for the protection of cultural property of Indigenous peoples; and three, the Council of Europe, an organization dealing with issues that affect the European community, has recently been holding discussions on Indigenous cultural property. Mr. Hart stated that ecclesiastical groups and institutions in Europe also need to be included in the process of locating Native American human remains. Mr. Bradley stated that efforts also need to be made to return items that left the US illegally, and the FBI has a good database for

reporting stolen items.

National Museum of the American Indian (NMAI): Ms. Laura Perez Arce reported that NMAI is currently working to return human remains to Latin America and the Caribbean. The museum has had a successful repatriation to Peru and has collections from ten other Latin American countries. Mr. O'Shea asked the legal basis under which these repatriations take place. Ms. Perez Arce replied that they are done under the initiative of the museum, which is a Federal agency.

Treatment of Sacred Objects and Objects of Cultural Patrimony with Pesticides

Mr. Leigh Kuwanwisiwma, Hopi Tribe, explained that the Hopi Tribe has been concerned with the issue of contamination of cultural objects through insecticide use by museums. He stated that this issue is of concern to the Hopi Tribe, since some objects will be reused subsequent to their repatriation. He described activities of the Peabody Museum in Boston to provide the Hopi Tribe with historical records of insecticide use on items that the Hopi Tribe would be interested in repatriating; that report detailed three items that were exposed to insecticides that the Hopi Tribe would be interested in repatriating and detailed precautionary measures to use when handling the items. This knowledge is important for the Hopi because the affected items, called Kachina friends or Kachina masks, will ultimately be distributed to various Hopi individuals for use. Nationwide, the Hopi Tribe has approximately 440 Kachina friends, of which 58 have already been repatriated.

The Hopi Tribe asked the NPS and the Review Committee to begin a systematic educational effort throughout the United States for institutions that are subject to NAGPRA, concerning the health effects of insecticide use on various items, including prayer sticks and textiles. Discussions should take place about items remaining in museum custody if safety becomes an issue regarding certain items. A concerted effort is needed on behalf of the Committee, the NPS, museums and tribes to make insecticide use and contamination a national issue. Museums have a moral, ethical and legal responsibility to give tribal people information on use of chemicals and also guidance as to levels of contamination and precautionary measures.

Ms. Naranjo asked about the possibility of this issue being presented at the next AAM meeting. Mr. Bradley replied that he was unsure if the topic could be placed on the agenda for the next meeting, but he did feel the information should be distributed to the museum community. Mr. Sullivan suggested an article be placed in *Adviso*, AAM's monthly newsletter. Mr. O'Shea suggested that the Hopi Tribe needs to concentrate initially on the museums that have been identified as using insecticides on Hopi objects and work out specifics of insecticide usage, the amount of contamination, precautionary measures and potential agreements to hold items until they can be decontaminated. Mr. Minthorn asked how the NPS can educate museums and universities in regard to different types of contamination of cultural items. Mr. McManamon replied that the issue could be publicized in *Common Ground*, the NPS newsletter, and also brought out through presentations to different groups. The NPS might be able to provide funding through the NAGPRA Grants Program to develop guidelines or surveys relevant to this topic. Mr. Bradley suggested including the topic on the NPS website.

Ms. Ann Hitchcock, Chief Curator for the NPS, stated that the NPS has specifically identified the need for treatment history to accompany repatriated objects, and in cases where history is not available for specific

items, museums usually have records of the type of treatment given to different objects during certain time periods. She added that professional literature contains a great deal of information on handling human remains that have been treated, for example, a recent *Conservo-Gram* article on testing and handling materials treated with arsenic. She also expressed the need for research on removing residual contamination, and suggested that grants be developed to do research in this area. Mr. Minthorn stated that tribes have a right to have total histories on the treatment of human remains and funerary objects, not just regarding contamination issues.

Nomination of a Seventh Member

Mr. Hart began the discussion of the nomination of the seventh member of the Review Committee by explaining that the seventh member would be selected by the Secretary of the Interior from a list of persons developed by the current Committee members. He added that possible qualities to look for in developing the list would be a person that has a legal background, a person from a geographical region not currently represented on the Committee, a person able to provide diversity to the Committee, a person who is Native American, and finally a gender consideration, because Ms. Naranjo was currently the only woman serving on the Committee. Mr. O'Shea suggested a person with expertise in medical and molecular issues.

Mr. O'Shea introduced Mr. Clark Spencer Larsen, a skeletal biologist from the University of North Carolina Chapel Hill. Mr. Sullivan introduced Ms. Vera Metcalf from Nome, Alaska. Ms. Naranjo introduced Mr. Jack Trope, attorney with Sant' Angelo and Trope, New Jersey; Mr. O'Shea, Mr. Minthorn and Mr. Hart objected. Mr. Bradley introduced Ms. Ramona Peters from the Mashpee-Wampanoag Tribe of Massachusetts. Mr. Minthorn introduced Mr. Patrick Lefthand from the Confederated Salish and Kootenai Tribes of Montana; Ms. Naranjo expressed concern regarding his geographical region. Mr. Hart nominated Mr. Alan Downer, from the Navajo Nation of Arizona; Ms. Naranjo expressed concern regarding his geographical region. Mr. Bradley introduced Ms. Rose Tyson, a physical anthropologist from San Diego, California. Mr. Minthorn introduced Mr. William Day, from the Tunica-Biloxi Tribe of Louisiana; Mr. O'Shea objected. Mr. Hart introduced Judge Steve Russell, from the Cherokee Nation of Oklahoma, residing in San Antonio, Texas, and Ms. Julie Droke, Registrar and Repatriation Specialist of the Oklahoma Museum of Natural History; Mr. Sullivan expressed concern regarding her geographical location.

After discussion, the Committee members consented to the following list of names for submission to the Secretary of the Interior for consideration for the seventh Committee member: Ms. Vera Metcalf, Ms. Ramona Peters, Mr. Patrick Lefthand, Mr. Al Downer, and Ms. Julie Droke.

Report to Congress

Mr. Bradley suggested the 1995 - 1997 Report to Congress be viewed as the report of the former Committee members and be submitted as such. Mr. Sullivan stated that the former Committee members, Ms. Rachel Craig, Mr. Phillip Walker, Mr. Jonathan Haas and Mr. Dan Monroe, should be allowed to review the Report and comment to Ms. Naranjo or the NPS. The Committee members agreed.

Upcoming Meetings

After discussion, the Committee members tentatively set the next meeting for late June 1998 in Boise, Idaho.

Public Comment

Ms. Annette Arkeketa, of the Otoe-Missouria, Muskogee Creek, Iowa and Cherokee Tribes, stated she works as a civilian for the Army and is co-chairperson for the American Resource and Education Coalition, a group dealing with Native American issues in Texas. She described an MOU between the Coalition, Fort Hood and the Comanche Tribe for the care of the Comanche National Indian Cemetery established at Fort Hood, Texas. The cemetery is a direct result of compliance with NAGPRA by the Army. She suggested other Federal agencies should set aside lands for reburials of inadvertent discoveries because reburial of human remains close to their original burial site is important to some tribes. She reminded archaeologists and museum people that NAGPRA is a Native peoples' protection law, and she opposes H.R. 2893. She recommended all Committee members be Native people, that all Federal projects that encounter burials should be stopped immediately, and that more information is needed from the DOJ regarding enforcement of NAGPRA. She thanked all Indian people who have helped in the repatriation effort.

Mr. Gary Aronsen, Department of Anthropology, Yale University, welcomed the Committee members. He stated that consultation is a complex problem for Federal agencies, institutions and Native American people. Training and guidance are important, but in his experience, the best way to handle consultations is for agency personnel to speak plainly with and gain first-hand knowledge of Native Americans.

Mr. Bill Billeck, Smithsonian Institution, in response to Ms. Giesen's comments, explained that the Smithsonian publishes a summary of all Smithsonian Review Committee activities on the Internet. Mr. Sullivan suggested a link from the NPS website to the Smithsonian website.

Mr. Bobby Billie, Independent Traditional Seminole Nation of Florida, stated that he is from the original Seminole Nation and that his history comes from the beginning of time, while the United States are only 300 years old. As the original people, they have a right to protect their people and their ancestors. Their ancestors have a right to be placed sacredly and peacefully in the ground and not be in museums. They have a right to freedom of their spirits, and they need somebody to speak for them since they cannot speak for themselves. He added that animals have a right to freedom of their spirits and should also be returned back to the earth from museums. Mr. Billie explained that if his ancestors get angry, something will happen to the earth. It is time for the United States to respect the cultures of his nation.

Ms. Cindy Bloom, American Indian Council of Illinois Repatriation and Sacred Sites Committee and Vice President of SOARRING, explained that Midwest SOARRING is an organization that works to protect burials in the Midwest and also on repatriation issues, and added that she has supported Mr. Billie in letters. Federal agencies have been giving excuses for their noncompliance, but museums and universities face the same problems. Estimates of taking an additional 20 years to come into compliance is deplorable, because Native people face many, many issues getting their ancestors back for reburial without waiting that long.

Mr. Bruce Bourque, Maine State Museum, stated that he perceived potential problems with some areas of discussion at the meeting. He said that at the New York Review Committee meeting, Mr. Walter Echo Hawk stated, "We didn't get everything we wanted, but we can live with what we got," demonstrating the compromising nature of the NAGPRA drafting process. Mr. Bourque stated that when considering the spirit of the law versus the letter of the law, over attention to the spirit of the law might separate it from the original spirit of cooperation in which the law was drafted. He was concerned about opinions that actions taken regarding repatriation to the Mashpee community under the Wampanoag Tribe of Martha's Vineyard are perceived as precedent-setting, as well as the idea that Federally recognized tribes feel that they can deal with all issues relevant to culturally unidentifiable human remains. He feels that respect for the letter of the law and a return to the original spirit of NAGPRA as one of compromise is needed, thus allowing archaeologists and educators a chance to assert the immeasurable value of ancient and culturally unidentifiable human remains and funerary objects as sources of enlightenment about the North American past.

Mr. Oliver Collins, Native American Alliance of Ohio, stated that out of 7,000 burial mounds, village and ceremonial sites originally in the state of Ohio, less than 700 remain today. He described his experience in 1986 of having to watch a burial mound destroyed by amateur archaeologists; 27 graves were disturbed, the artifacts were collected, and the human remains were thrown to the side. He stated that over 7,000 artifacts were removed from the mounds, but only 2,000 are documented today. After extensive discussions with the amateur archaeologists and the Ohio Historical Society and after a period of study of the human remains, the Native American Alliance of Ohio was allowed to rebury the human remains, but not the burial goods. The Alliance later leased the site to protect the mounds. He stated that on January 25, 1998, Ohio House Bill 429 passed the Ohio House of Representatives, 95 to 0, to protect all cemeteries including Indian cemeteries. The Alliance will be active in seeing that the bill passes the Senate. He questioned the cutoff date in Ohio of 1660 AD for determining cultural affiliation. All human remains determined to be older than that date are considered culturally unidentifiable, and he asked the Committee to try to eliminate that arbitrary designation. In responding to Mr. Day's comments, Mr. Collins stated that in 1986 when the mound was destroyed, he contacted every tribe in the US and no tribe was interested in helping with the reburial of the human remains, unless paid to do so.

Ms. Barbara Crandell, Native American Alliance of Ohio, explained that the Native American Alliance of Ohio works in Ohio to preserve and protect mounds and sacred sites and have successfully passed legislation to protect the human remains of all people. She came before the Committee to present a plan for the respectful retention of culturally unidentifiable human remains and associated funerary objects in the ground on DOE land, and added that the plan was developed and implemented in response to discussions at the Review Committee meeting in Norman, Oklahoma in March 1997. On May 25, 1997, five complete sets of human remains, one complete set of canine remains and fragments from 19 individuals were respectfully placed in the ground by DOE personnel at the Fernald Weapons Site, and at no time did the Native American Alliance of Ohio take possession of the human remains. The DOE also communicated with the Federally recognized tribes in the area. She stated that the Native American Alliance of Ohio is petitioning the DOE for additional land to accommodate the thousands of culturally unidentifiable human remains in the state of Ohio. The land would become a park, remaining under the auspices of the Federal Government. This action is supported by the Crosby Township, the Ohio Environmental Protection Agency, the Native American Alliance of Ohio, Crosby Township's historical society, state legislative representatives and grassroots representations. She asked the Committee for a

recommendation to enable museums, historical societies and universities to release culturally unidentifiable human remains. This plan would allow human remains to be reburied and protected, and if technology could be developed that would later identify the human remains, they could then be repatriated by their descendants. The park grounds could be utilized as an educational facility and possible museum site, to show the history of the times and the lifestyles of the people, without compromising the sanctity of the burials. Mr. Minthorn asked about the number of culturally unidentifiable human remains in Ohio and the amount of land needed from the DOE. Ms. Crandell replied that the number is over 4,000 human remains; the Ohio Historical Society has over 3,500 human remains and only eight are identified. She explained that the Federal Government has offered the use of a designated green space for this park, but she is not sure how many acres are involved.

Mr. William Day, Director of the Cultural and Heritage Program for the Tunica-Biloxi Indians of Louisiana and Chairman of the Culture and Heritage Committee of the United South and Eastern Tribes, listed his concerns with the Federal agency presentations before the Review Committee: with the Navy presentation, inaccurate tribal and consultation information on the US Navy and Marine Corps Guide to Native American Groups map, question of the extent and accuracy of information regarding the Southeast tribes in the Navy culture courses, inaccurate claims of the Navy and Corps of Engineers that the majority of collections exist in the western US; with the DOE presentation, lack of consultation with Tunica-Biloxi Tribe; with the Corps of Engineers presentation, lack of adequate consultation with Tunica-Biloxi Tribe. He explained that in regard to the Hastings bill, H.R. 2893, there is opposition to that bill and any legislation that advocates study of human remains and the United South and Eastern Tribes will fight its passage. Mr. Day commended Mr. McKeown's advice and responsiveness regarding NAGPRA issues.

In response to remarks by the Native American Alliance of Ohio, he explained that the Tunica were the last known mound builders in the Mississippi Valley. The Tunica have a museum in the shape of a mound where artifacts from over 150 burials are now housed, after years of litigation to get the remains back from Harvard University and restoration necessary after the remains were inadequately housed. He stated that Harvard University was unethical in its purchase of those materials from the grave robber and in their inadequate curation of the materials, and added that they never actually paid for the collection. He encouraged the Committee to follow the law and deal only with Federally recognized tribes in all issues regarding NAGPRA and repatriation; that some groups are trying to use NAGPRA as a step toward Federal recognition and not out of true concern for the human remains and artifacts. He suggested that any non-Federally recognized group wishing to participate in NAGPRA go through the process of recognition with the BIA or work with Federally recognized tribes to repatriate the human remains. He stated he was not aware of the Native American Alliance of Ohio or their ethnic makeup. He is offended by the notion that white people are reburying these human remains, however well intentioned. He supports the actions of the Minnesota Indian Affairs Council in their repatriation efforts, adding that Minnesota may be the origin of the Tunica people. Mr. Day explained that he has been working with the Advisory Council of Historical Places to have traditional cultural authorities put back in the regulations and for signatory authority on MOAs on government agency projects where it would impact a site of a particular tribe, and expressed his disappointment that the NPS and DOI and other Federal agencies opposed those two items.

Mr. Alan Downer, Director of the Navajo Nation Historic Preservation Department, stated that he participated in the negotiations leading up to the passage of NAGPRA, and feels that since NAGPRA was the result of dialogue among museums, the archaeological community and Native Americans, that any amendments to NAGPRA, such as the Hastings bill, H.R. 2893, also be the product of similar dialogue.

Mr. Maurice Eben, Tribal Councilman for the Pyramid Lake Paiute Tribe, stated his tribe has had repeated problems dealing with Federal agencies, including a recent statement by Ms. Marilyn Nickels of the BLM that NAGPRA did not apply to the BLM. BLM estimates of 20 years to reach compliance with NAGPRA regulations are ridiculous. He added agency compliance needs to be enforced. Regarding human remains, such as Wizards Beach Man estimated to be 9,200 years old and Spirit Cave man estimated to be 9,400 years old, tribal people know who these are, regardless of lack of documentation by the professional world. The science of archaeology is too young and its methods are unacceptable for making determinations of cultural affiliation. He stated the National Congress of American Indians Repatriation and Reburial Commission, for which he is Chairman, opposes H.R. 2893 and supports S. 110. He explained that before NAGPRA was enacted, his tribe was involved in repatriations from the Nevada State Museum and the University of Nevada at Reno, but those repatriations have stopped. He feels this is due to a lack of understanding and difficulty implementing NAGPRA on the part of both tribes and agencies. Mr. Eben suggested the Committee have an attorney versed in Indian law on hand to answer questions, and added that a national NAGPRA office would be helpful to address issues on an ongoing basis. He emphasized the fact that Native Americans are the experts regarding their ancestors' way of life.

Ms. Myra Giesen, Bureau of Reclamation, stated a concern about double reporting of items on Federal agency and also on the curating museum's inventories and summaries. She stated the Bureau of Reclamation will be contacting museums to try to identify and remove double listings. She suggested the NAGPRA Review Committee and the Smithsonian Institution Review Committee try to coordinate providing information to the public, and she asked if the minutes of the Review Committee meetings are available to the public. Mr. McKeown replied that minutes of the meetings are available on the Internet and complete transcripts are available on disk from the NPS. Ms. Giesen then asked how the NPS could get funding for additional staff and suggested the Review Committee make a recommendation to Congress for additional funding.

Mr. Joe Joaquin, Mr. Joaquin, member of the Tohono O'odham Nation of southwest Arizona, agreed with Mr. Day's opposition of the Hastings bill, H.R. 2893, and gave his support to NAGPRA in the hope that his tribe will get back their ancestors' human remains. He explained that his tribe needs to deal with repatriation of human remains in their own way, which is reburial in one designated location, to ensure future protection of the human remains and associated funerary objects. He explained that they are capable of identifying their ancestors and the Federal and state agencies they deal with understand that. He emphasized consultation needs to occur and agencies need to listen to tribes during these discussions. He hoped the agencies would listen to what was said at the Review Committee meeting.

Ms. Shannon Larsen, EEC, explained efforts made by Mr. Billie to repatriate human remains from Cape Canaveral National Seashore. A letter was sent to at least 30 different tribes and nations throughout the southeastern United States concerning Mr. Billie's efforts to repatriate the human remains, and not one objection was received. His repatriation request was still denied because Mr. Billie was not able to prove he is a lineal descendant or from a culturally affiliated tribe, and also because non-Native people reviewed Mr. Billie's letter. She described another situation where Mr. Billie tried to repatriate human remains and was asked to provide information that he is not able to provide under traditional law. Mr. Billie was allowed to repatriate only when Mr. Fred Dayhoff, a ranger from the Everglades, supported Mr. Billie in a letter, making the same claims that Mr. Billie had made. Ms. Larsen stated that after helping Mr. Billie

with hundreds of repatriations, she needed to say that no more permitting should be allowed for removal of human remains and funerary objects, that these items can never be returned to their original positions or sometimes even with their original items.

Mr. Ronald Little Owl, Three Affiliated Tribes and the North Dakota Intertribal Reinterment Committee, agreed with Mr. Billie that human remains cannot be owned. He explained that he has been involved with repatriation since 1982 when he first reburied excavated human remains and artifacts. He stated that human remains do not belong in museums and should be returned to Indian people for repatriation and reburial. He added that he would identify any human remains determined by the scientific community to be culturally unidentifiable, and that he would do this for free. Mr. Little Owl explained a consultation problem with the Corps of Engineers because they have considered brief telephone conversations as consultation. He is very cautious and will not consult with anyone by himself, only when another tribal member is present and only after careful consideration of the situation. He described the oral history of his tribe as including mention of dinosaurs, as well as geographic connections with the Biloxi Tribe and the Cocopah Tribe. He said that in an effort to prove to the science world that Native people have been here for a long time, he has invited the other members of the Smithsonian Review Committee and the NAGPRA Review Committee to witness a sun dance and a traditional burial.

Ms. Jean McCoard, Native American Alliance of Ohio, stated that the treatment of Native American human remains is a holocaust situation, the destruction of the pasts of millions of American Indians. She added that the term culturally unidentifiable implies that the ancient ones had no culture, no connection to recent generations, and that recent generations had no knowledge of the ancient ones and received nothing from them in terms of language, tradition, customs, memories or stories. She added that Native Americans do not refer to these human remains as culturally unidentifiable. Only after colonization were the mounds unearthed, and in 1894, the Smithsonian Institution issued a report acknowledging that the ancient ones of the mound-building eras were the ancestors of present-day Indians. She added that the plan of the Native American Alliance of Ohio, as described by Ms. Crandell, is a good solution for the culturally unidentifiable human remains.

Mr. John Sipes, Cheyenne from Oklahoma, expressed concern about lack of protocol for ceremonial people in government-to-government relationships. His tribe has a traditional government that has been excluded from NAGPRA activities. The Cheyenne Tribe will back all nations trying to prevent excavations; burial grounds and ceremonial sites need to be left alone. Ceremonial people and old people need to be consulted regarding Native history and culture.

Mr. Vin Steponaitis, Society for American Archaeology (SAA), stated that in his experience the NAGPRA process has, in most cases, worked and done positive things, including improved dialogues between Native Americans, archaeologists and museums. He stated, in response to Ms. Yellow Bird, that he also worked on the passage of NAGPRA and he remembered the discussions between the Indian organizations and the museum and archaeological organizations resulting in many, many points of agreement, with more grounds for consensus than dispute. NAGPRA was ultimately a compromise between spiritual concerns and scientific concerns. He urged people to engage in dialogue rather than assuming that people with different viewpoints are acting in bad faith. NAGPRA cannot be construed as a mandate for new studies of human remains, which is very different from prohibiting any study. Mr. Hart asked Mr. Steponaitis to speak to SAA's position regarding H.R. 2893. Mr. Steponaitis replied that after review of the bill, SAA's repatriation committee supported the bill in its current form. SAA does not

oppose repatriation and feels that where there is cultural affiliation, the tribe that is culturally affiliated has a moral right to request human remains and the associated funerary objects, and H.R. 2893 does not prevent repatriation that would occur under NAGPRA. He explained that H.R. 2893 had two main provisions: one, a provision that provides opportunities for scientific study prior to repatriation under certain circumstances, consistent with SAA's belief that the study of the past is important; and two, a provision that would allow, in cases where there may be cultural affiliation, human remains to be claimed by a tribe on whose aboriginal territory, as adjudicated by the Indian Claims Commission, those human remains were found.

In responding to Mr. Day's comments, Mr. Steponaitis clarified that it was a professional looter who collected the Tunica artifacts and disposed of the bones from the burial sites. The reason the offer was made to buy the Tunica collection was only to prevent sale of the collection on the open market, and was not a common occurrence. If the museum had not offered to buy the collection, it would not be in the Tunica-Biloxi museum today. The reason the looter was not paid for the collection was that the looter did not, as he previously asserted, have title to the collection, nor did he have permission from the landowner to excavate.

Ms. Pemina Yellow Bird, Three Affiliated Tribes, stated she was happy to see the Review Committee members again and offered support to Mr. Bobby Billie on behalf of the tribes of the state of North Dakota. She expressed concern about the Bureau of Reclamation and the way they turned over human remains in their collections, consisting of a piece of a jaw and a skull shard, to the Smithsonian. She stated that the agreement between the Bureau of Reclamation and the Smithsonian was formalized in a MOA without tribal consultation, and added she has since learned that this practice has been followed by the Corps of Engineers and the NPS. She then asked if Federal agencies were, in fact, responsible for repatriating human remains and burial goods excavated from lands they manage or not. She also expressed concern with the procedures to bring a grievance before the Review Committee, and added that having the NPS review potential grievances is a conflict of interest. Ms. Yellow Bird explained that when the Bureau of Reclamation was discussing their MOA with the Oglala Tribe, they did not mention her tribe's request to develop an MOA regarding treatment and disposition of unmarked human burials found on land managed by the Bureau of Reclamation in tribal aboriginal homelands. She added that her tribe has been very successful in negotiating a similar MOA with the US Army Corps of Engineers Omaha District and the Western Area Power Administration, and she added that there has been no response to their proposal to the Committee to publish their MOA in the Federal Register as an example to other tribes. She stated, as part of the national tribal coalition that helped put together NAGPRA, they were very clear that the language in NAGPRA prohibited new scientific study, and added that the tribes in North Dakota will vigorously defend that language and will oppose any scientific analysis, because it is directly opposed to their spiritual beliefs. Contrary to statements made by the BIA, there was no consultation with her tribe regarding sending human remains to the University of Arizona for study. She explained that a Bureau of Reclamation plan for doing inventory of human remains in their control includes the use of radiography, and added that was also without the notification and consent of her tribe. In response to Mr. Steponaitis's statements, Ms. Yellow Bird accepted his invitation to participate in a dialogue, but stated that nothing he would say would change her opinions.

Ms. Yellow Bird welcomed the new members of the Committee and stated her appreciation for past Committee members. She cautioned the Committee members not to take comments or disagreements personally, that she and others are expressing their experiences and opinions on these matters with full

respect for the Review Committee. She requested, on behalf of the tribes in North Dakota, that the Review Committee compile information regarding compliance, which Federal agencies are in compliance, which are not and for what reasons; which Federal agencies have developed processes for consultation on a government-to-government basis with tribes concerning inadvertent discoveries, intentional disinterments, and protection and preservation plans; which Federal agencies have a budgeted line item for NAGPRA; and which Federal agencies have NAGPRA as an established agency priority.

Ms. Yellow Bird thanked Mr. McManamon for his acknowledgment of the offensive nature of the term culturally unidentifiable human remains. She asked the Committee to maintain their recommendation that the decisions regarding disposition of culturally unidentifiable human remains are determined by Indian people. She explained the official position of the North Dakota Intertribal Reinterment Committee, if human remains were taken from their collective aboriginal homelands, they will be returned for reburial on Indian lands. They reject the notion that scientific analysis can conclusively identify a set of human remains as to tribal origin; identification can and has been determined by Native peoples. The North Dakota Intertribal Reinterment Committee proposes that tribal NAGPRA representatives and spiritual leaders form regional intertribal coalitions to decide on a consensus basis what will happen to these human remains, and that all decisions be left to Native Americans regarding their ancestors. Ms. Yellow Bird stated that the Tallbull Forum should be attended by individuals representing their Indigenous nations on these intertribal coalitions, and Native Americans should lead the discussions. These relatives deserve the right to rest in peace and need to be returned. She expects to receive a letter from the Review Committee answering her questions about how Federal agencies are going to be penalized for being out of compliance with the law and how to bring a grievance against the NPS for deciding which issues the Review Committee will hear.

Closing

On behalf of the Committee members, Ms. Naranjo thanked the NAGPRA staff for their hard work. On behalf of the Secretary and the DOI, Mr. McManamon thanked the Committee members for their work in preparing for and attending the meeting, the members of the audience for their presentations and comments, and the NAGPRA staff for their hard work.

Mr. Minthorn gave the closing invocation. The meeting was adjourned at 4:00 p.m. on Saturday, January 31, 1998.

Approved:

S\ Tessie Naranjo

Tessie Naranjo, Chair
Native American Graves Protection
and Repatriation Committee

August 5, 1998

Date